

בית צלם

**B'TSELEM**

The Israeli Information Center for Human  
Rights in the Occupied Territories

# Israeli Violations of Human Rights of Lebanese Civilians

Jerusalem, January 2000



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# בִּיזָה

**מרכז המידע הישראלי לזכויות האדם בשטחים [ג.ד.]**

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## Introduction

Israel's war against various armed groups, waged along its northern border and in Lebanese territory, has continued for more than twenty years. Some of this period has been relatively quiet. However, there have also been particularly violent periods, the most violent being Operation Litani (1978), the Lebanon War (1982), Operation Accountability (1993), and Operation Grapes of Wrath (1996).

During the past two decades, Israel, through both the Israel Defense Force (IDF) and the South Lebanon Army (SLA), has violated fundamental human rights of Lebanese civilians. We shall show in this report that Israel's control in South Lebanon is, in effect, military occupation.<sup>1</sup>

The debate in Israel concerning the IDF's presence in Lebanon focuses primarily on Israel's willingness to continue to sacrifice its soldiers' lives and the desire to protect residents in the north of Israel. Over the years, primarily since the invasion of Lebanon in 1982, numerous protest groups in Israel have called for the IDF to withdraw from Lebanon, and at crucial times even led mass rallies supporting withdrawal. Many political parties included and continue to include platforms stating the need to withdraw. Withdrawal was a major issue in the 1984 national elections and, to some degree, also in the recent elections, during which the "One Israel" candidate for prime minister, Ehud Barak, promised to withdraw the IDF from Lebanon by July 2000.

The public debate almost completely ignored the suffering and injustice inflicted on Lebanese civilians, residents of the "Security Zone" in particular. Israel's violations of human rights often receive minimal or no media coverage, and are not taken into account in the public debate relating to the IDF "presence" in Lebanon. The human rights of Lebanese civilians, even recognition that Israel maintains a violent and prolonged occupation, are not part of the collective Israeli consciousness. The State Attorney's Office steadfastly argues that no occupation exists in South

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1. Israeli control covers not only South Lebanon. It also stretches into parts of the western Lebanese Bekaa. In this report, the term "South Lebanon" refers also to areas in the Lebanese Bekaa under Israeli control.

Lebanon, and that most of the violations of human rights are the responsibility of the SLA and not of Israel.

The tendency to ignore the prolonged and grave violations of human rights of South Lebanese civilians by Israel was also demonstrated by Israeli human rights organizations - including B'Tselem - which dedicated scant attention and resources to events on the other side of Israel's northern border.

The objective of this report is to combat the denial and disregard of human rights violations committed during Israel's occupation of South Lebanon. The report documents some of the acts committed by Israel in this context, which constitute gross human rights violations and are prohibited both by international law and domestic Israeli law.

## **Clarifications**

- A. The prolonged Israeli occupation of South Lebanon violates the area's residents' right to self-determination. B'Tselem's position is that Israel must end the occupation and withdraw to the international border. However, B'Tselem takes no position as to the circumstances and conditions under which the occupation is ended, provided that the solution safeguards the human rights of all persons involved. The principal argument is, like B'Tselem's position regarding the West Bank and the Gaza Strip, that as long as occupation continues, Israeli authorities must protect the human rights of all persons under its control, and must strictly enforce, without bias, international humanitarian law, international human rights law, and Israeli domestic law.
- B. As an Israeli human rights organization, which seeks to influence Israeli government policy, B'Tselem focuses on documenting the policies and actions of Israel and those acting on its behalf. One should not conclude from this that other entities operating in Lebanon, among them the Lebanese government, Hizbullah, Amal, and Syria, do not violate human rights, or that their violations are less grave than Israel's. Chapter Five deviates slightly from this framework, and also

relates to human rights violations by Hizbullah and other armed groups that shell Israeli civilians in northern Israel.<sup>2</sup>

- C. Preparation of this report entailed substantial methodological difficulties, stemming from the lack of direct access to the area where the human rights violations occurred. The Israeli government refuses to allow human rights organizations, and almost every other civilian body, to enter the occupied zone in South Lebanon. The Lebanese government prohibits Israeli citizens from entering its territory and does not allow its citizens to have any contact with Israelis. These difficulties prevented B'Tselem from independently obtaining testimonies from the victims. Thus, parts of the report rely on research of international organizations such as Amnesty International (Amnesty) and Human Rights Watch (HRW).<sup>3</sup> In other parts of the report, B'Tselem relies on the petition to the High Court of Justice filed by HaMoked: Center for the Defence of the Individual and The Association for Civil Rights in Israel, which presents a legal analysis of Israel's obligations as the occupier of South Lebanon. In addition, research in preparation of this report included, in part, the following sources: testimonies to B'Tselem by IDF soldiers, correspondence with Israeli authorities, press reports in Israel and Lebanon, publications of Lebanese human rights organizations, reports of UNIFIL and other UN bodies, conclusions of the group monitoring the Grapes of Wrath Understandings, statements of the IDF Spokesperson and Ministry of Defense, and court affidavits given by Israeli representatives.

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2. Although activity of human rights organizations around the world focus on governmental acts, in the past two decades many organizations have also documented human rights violations of armed opposition groups. The legal basis for such review is, in part, that customary international law also applies to non-governmental bodies. For a brief review of the basis for reviewing actions of opposition groups that violate human rights, see B'Tselem, *Collaborators in the Occupied Territories During the Intifada: Human Rights Abuses and Violations* (January 1994), pp. 10-14.

3. Human Rights Watch is the largest and most important human rights organization in the United States, and the second largest human rights organization in the world, after Amnesty. It documents human rights violations throughout the world and brings them to the attention of the public and governmental officials. The organization has developed a reputation for producing reliable and objective research.

## Structure of the Report

Chapter One presents a brief historical review of Israel's involvement in Lebanon since the Litani Operation, of 1978, relating to the salient factors and events during this period. This chapter includes information on the "security zone" and its residents.

Chapter Two deals with two basic questions relating to Israel's responsibility for the human rights violations described later in the report. First, this report shows that Israel is the occupier of South Lebanon, and is therefore subject to international humanitarian law regarding occupied territory. Second, the report will show that the SLA is subordinate to Israel, and Israel consequently is liable for SLA acts.

Chapter Three discusses detention of Lebanese civilians by Israel. The first part of the chapter relates to Lebanese civilians detained arbitrarily and extra-judicially in Al-Khiam Prison. This part focuses on the use of torture during interrogations in the prison and on prison conditions. The second part of the chapter discusses the situation of the Lebanese held administratively in Israel as "bargaining chips," with the approval of the High Court of Justice, to obtain the release of Israeli POWs and MIAs.

Chapter Four describes one of the most serious methods used by the SLA against South Lebanon's residents: expulsions from the "security zone" northwards. These expulsions are used to collectively punish entire families for suspected acts committed by their relatives. This chapter also discusses other phenomena revealed in expulsion cases, such as harsh restrictions on freedom of movement, imposition of closure on villages, and forced conscription of young men and minors into the SLA.

Chapter Five discusses the combat conduct of the IDF and SLA, on the one side, and Hizbullah and other armed groups, on the other side. This chapter shows how the two sides consistently ignore the laws of war that are intended to protect, as much as possible under the circumstances, civilian lives and property. The chapter describes and analyzes several examples of conspicuous violations of the laws of war during Operation Accountability, of 1993, Operation Grapes of Wrath, of 1996, and the past three years. The chapter also discusses both sides' use of prohibited weapons.

## Chapter One:

# The Security Zone - Background

During the war of 1948-1949, in the course of which the State of Israel was established, hundreds of thousands of Palestinians were expelled or fled from the country. Tens of thousands of them, primarily those who lived in Haifa and the Galilee, reached Lebanon and settled there, mostly in refugee camps along the coastal strip. Until the early 1970s, the presence of these refugees near Israel's northern border did not pose a significant threat to Israel.

In September 1970, the Palestinian Liberation Organization (PLO) infrastructure in Jordan was destroyed and thousands of its members killed by the Jordanian army.<sup>4</sup> As a result, the PLO transferred its center of operations to Lebanon, which greatly affected the balance of political forces in Lebanon, and the status of the Palestinians, in particular. Although PLO headquarters were in Beirut, its center of power was in South Lebanon, where most of the Palestinian population lived. During the 1970s, the PLO established an extensive institutional structure, based on its economic and military power, which was described by experts as "a state within a state."<sup>5</sup> From the moment that PLO headquarters moved to Lebanon, attacks by armed Palestinian groups against settlements in the Galilee - which had been infrequent since the middle of the 1960s - rose significantly.

Israel responded to these attacks with artillery fire, shelling from the air, and commando raids into Lebanon. The objective of the retaliatory

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4. During the massacre, the Jordanian army killed some 3,000 Palestinians, most of them guerillas, primarily in the refugee camps surrounding Amman. In another operation, in July 1971, guerilla groups operating in northern Jordan were expelled. Baruch Kimmerling and Joel Migdal, *Palestinians: The Making of a People* (New York: The Free Press, 1993), pp. 229-230.

5. The independence of the PLO was apparent in its involvement in almost every area of life, from provision of welfare and health services to separate tax collection and legal systems. The greatest expression of independence was the PLO's military power, which increased during the 1970s. On this matter, see *Ibid.*, pp. 231-233; Rashid Khalidi, *Under Siege: PLO Decision-making During the 1982 War* (New York: Columbia University Press, 1986), pp. 33-36.

attacks, as they were called in Israel, was not always PLO military bases or camps where PLO combatants lived. Israel often attacked Lebanese villages and towns, the objective being to punish the residents for allowing the PLO to operate among or near them. As a result, the Lebanese population in South Lebanon became estranged from the PLO, the Shi'ites in particular, because the PLO was blamed for their tragedy.<sup>6</sup>

In 1975, a civil war along ethnic lines broke out in Lebanon, lasting on and off for some fifteen years. The central government disintegrated and numerous armed groups controlled various parts of the country. The rise in PLO political and military power in Lebanon, and PLO cooperation with leftist Islamic forces significantly threatened the dominance of the Christian-Maronite political elite.<sup>7</sup> Against this background, the Lebanese Christian Army, commanded by Major Sa'ad Haddad, was organized in 1976. Its principal purpose was to combat PLO armed groups and hopefully expel them from South Lebanon. The militia was generously assisted economically and militarily by Israel, with which it shared common interests. As part of its cooperation with the Christian population in South Lebanon, Israel initiated the "Good Fence" policy, which enabled the Christian population to enter Israel for humanitarian and economic reasons, and Haddad's soldiers to cross the border to be trained by the IDF.<sup>8</sup>

The IDF's first large-scale invasion into Lebanese territory took place in March 1978 in what was called the Litani Operation. The immediate impetus for the operation was an attack on the coastal road in Israel, in which Fatah killed thirty-seven Israeli civilians. In retaliation, Israel decided to launch an operation that would reduce Palestinian organizations' ability to act against Israeli targets in the Galilee, by taking temporary control of part of South Lebanon. Although the IDF's stated target was armed PLO groups, the civilian population paid the heaviest price. According to one estimate, some 1,100 Lebanese and Palestinians,

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6. *Ibid.*, p. 42; Ahmad Beydoun, "The South Lebanon Border Zone: A Local Perspective," *Journal of Palestine Studies*, vol. 23, no. 3 (Spring 1993), p. 39.

7. William Harris, *Faces of Lebanon* (Princeton: Wiener, 1997), pp. 152-161.

8. Kristen Schulze, *Israel's Covert Diplomacy in Lebanon* (London: Macmillan Press, 1998), p. 100.

most of them civilians, were killed.<sup>9</sup> As a result of the IDF's invasion, the PLO moved its military bases northwards, mostly to the area between the Litani and Zaharni Rivers, but its organizational infrastructure was relatively unaffected.

When the operation ended, the UN Security Council passed Resolution 425, which called on Israel to withdraw immediately from Lebanese territory, and Resolution 426, pursuant to which UNIFIL was established to take part in and verify IDF withdrawal. The IDF withdrew from the occupied territory, except for a zone of some ten square kilometers along the border, which was called the "security zone." Israel decided to maintain control over this area both by the IDF and the forces of Major Haddad, which took its present name - the South Lebanon Army (SLA).

In 1981, fighting between Israel and the PLO increased dramatically, and in June 1982, Israel invaded Lebanon in what was called Operation Peace for the Galilee. Shelling by the Israeli Air Force during the war killed hundreds of Lebanese civilians and wounded thousands. IDF forces reached Beirut and occupied the western part of the city. In September 1982, under Israeli auspices, the Christian Falangists killed some 800 Palestinian refugees in the Sabra and Shatila refugee camps in western Beirut. The war dramatically changed the balance of power in South Lebanon. The PLO was forced to move its headquarters from Lebanon to Tunis. From among the Shi'ites in South Lebanon, who initially believed that the IDF was saving them from the PLO, Hizbullah was formed. It would become Israel's principal enemy in Lebanon.<sup>10</sup>

As the number of Israeli soldiers killed in Lebanon rose, the political pressure to withdraw the IDF from Lebanon increased. Between June 1982 and June 1985, 654 Israeli soldiers were killed and 3,884 were wounded.<sup>11</sup> In January 1985, a large majority of the Israeli cabinet favored withdrawing in stages over a six-month period, by designing the security

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9. Augustus Norton and Jillian Schwadler, "(In) Security Zones in South Lebanon," *Journal of Palestine Studies*, vol. 23, no. 1 (1993), p. 65.

10. Yossi Beilin, *Guidebook for Leaving Lebanon* (in Hebrew) (Tel-Aviv: Hakibbutz Hameuchad, 1998), p. 11.

11. Reuven Ehrlich, "The Concept of the Security Zone and Putting it to the Test of Reality," *The Security Zone in Lebanon: Re-evaluation* (in Hebrew) (Jerusalem: Leonard Davis Institute, Hebrew University, Jerusalem, 1997), p. 23.

zone under SLA control with IDF backing.<sup>12</sup> On the eve of June 1985, most IDF forces withdrew from Lebanon. Nevertheless, as Yossi Beilin noted, after the withdrawal, the situation gradually began to change significantly:

The story of our return to Lebanon, despite the explicit decision of the government and without any government having made an opposite decision, is a tale of an uncontrolled process, which did not pass thorough review in the Knesset, the government, the security cabinet, nor even the IDF. From time to time, the IDF made status evaluations, presented them to the Minister of Defense for approval, and all the rest was lip service. The SLA [which was transferred to General Lahad's command] became, over the years, a mostly Shi'ite army, a substantial part of whom were compelled to join for economic or other reasons. It was unable to stand alone against Hizbullah and control the security zone. The term "IDF backing" was shown to be very flexible, and through it, what started as a few Israeli trainers assisting the SLA in 1985, turned into a situation in which the IDF staffs a significant portion of the encampments...<sup>13</sup>

The area that remained under Israeli and SLA control after June 1985 was an expanded version of the security zone that Israel maintained between 1978-1982. It commands an area of some 800 square kilometers, constituting ten percent of the territory of Lebanon.<sup>14</sup> As of August 1999, some 2,500 SLA soldiers and some 1,100 IDF soldiers were stationed in South Lebanon.<sup>15</sup>

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12. Paragraph 2 of government decision 281, of 14 January 1985 states that, "The IDF will deploy along the Israel-Lebanon international border, maintaining a zone in South Lebanon (SLZ) in which local forces (SLA) will operate with IDF backing."

13. Beilin, *Guidebook for Leaving Lebanon*, p. 13.

14. The borders of the "security zone" changed from time to time, but the changes were marginal, resulting primarily from the SLA's problems in controlling those who opposed the Israeli occupation.

15. The figures were provided by Major General Dan Halutz, head of the IDF Operations Department, in paragraph 24 of his affidavit (hereafter: the second affidavit) in response to the petition to the High Court of Justice filed by HaMoked: Center for the Defence of the Individual and the Association of Civil Rights in Israel, represented by attorneys Tamar Peleg-Sryk and Dan Yakir, and four Lebanese detainees imprisoned in Al-Khiam Prison to obtain their release. HCJ 1951/99, *Ramdan et al. v. Minister of Defense* (hereafter: *Al-Khiam*).

In September 1989, with the mediation of the Arab League, the factions fighting in Lebanon signed the Ta'if Agreement, which ended the civil war in Lebanon and led to the disarmament of the warring groups, other than Hizbullah, which was perceived in Lebanon as a legitimate balance to the SLA's continued existence, and as a symbol of Lebanon's opposition to the Israeli occupation. This agreement also legitimized deployment of Syrian forces in Lebanon. Syria currently has 35,000-40,000 troops there. In two agreements signed in 1991 between Syria and Lebanon - the Agreement for Brotherhood, Cooperation, and Coordination, and the Joint Defense Agreement - Syria expanded its political and military influence over Lebanon.<sup>16</sup>

Hizbullah ultimately turned into a trained and well-equipped guerilla force. The organization receives regular financial and military support from Iran, with Syrian mediation and consent.<sup>17</sup> In addition to Hizbullah, a long-time Shi'ite militia - Amal - and several small Palestinian organizations operate against Israel.

Since 1978, a force of about 4,500 UNIFIL soldiers has been stationed in South Lebanon. The UN renews its mandate every six months.<sup>18</sup> The significance of UNIFIL in the area is relatively marginal, because it was never in a situation to execute its mandate of accompanying the Israeli withdrawal from South Lebanon. It currently has three principal tasks: observe events, reduce the level of violence between the warring parties, and protect civilians. It does this by patrols, 146 checkpoints, and lookouts.<sup>19</sup>

As a result of the war and Israel's policy implemented by the IDF and SLA (see Chapter Four), the number of residents living in the "security zone" has fallen dramatically since Israel's invasion in 1982. In 1985, at the time the "security zone" was formulated, the occupied zone contained 250,000

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16. Harris, *Faces of Lebanon*, pp. 279-309.

17. Shlomo Brom, *Israel and South Lebanon: Before A Peace Agreement with Syria* (Iaffee Center for Strategic Studies (Tel-Aviv: Tel-Aviv University, 1999).

18. The UNIFIL force is currently composed of soldiers from Fiji, Finland, France, Ghana, India, Ireland, Nepal, Italy, and Poland. For further details on the forces, see <http://www.un.org/depts/DPKO/Missions/unifil.htm>.

19. Hirst, "South Lebanon: The War That Never Ends?" *Journal of Palestine Studies*, vol. 23, no. 3 (Spring 1999), p. 10.

residents. In the last census, of 1996, the population there amounted to 106,000 persons, and current estimates range from 75,000-100,000.<sup>20</sup> Residents of South Lebanon live in more than 100 villages and three towns. About one-half of the population of the area are Shi'ite Muslims, and the remainder is composed of Sunni Muslims, Christians, and Druse.

Residents of the "security zone" are largely economically dependent on income generated in Israel. SLA soldiers receive their salaries, which range from US\$500-600 a month, directly from Israel. Also, families of SLA personnel are entitled to receive permits to work in Israel, and some 3,000 Lebanese currently cross into Israel daily to work under this arrangement. In addition to raising tobacco, which is marketed by a Lebanese governmental company outside the "security zone" as well, the other crops are solely for local consumption. One principal reason for this is Lebanese government restrictions on movement of goods northwards, in order to prevent penetration of Israeli goods into the Lebanese market.<sup>21</sup> In addition, movement of goods outside the zone, such as importation of goods into Israel, requires approval from the SLA, which, according to reports, can only be obtained through payment of a "fee" and other forms of bribery.<sup>22</sup>

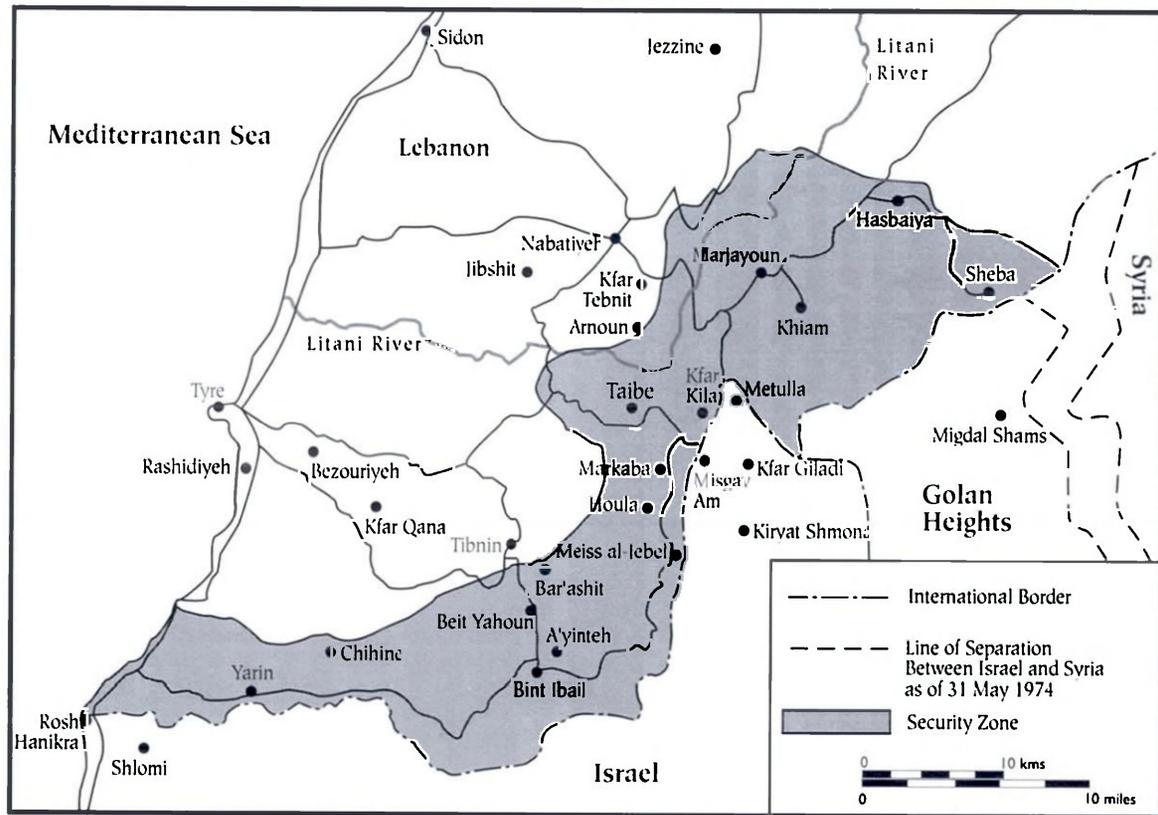
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20. Ariela Ringel-Hoffman, "Protect Me from My Friends," *Yediot Aharonot*. Weekend Supplement, 5 March 1999. See also Hirst, "The War that Never Ends?" p. 13.

21. Pierre Kaufmann, "Area that Appears Like a Spider's Web," 18 *On the Other Hand* (August 1999), pp. 26-27.

22. Hirst, "South Lebanon: The War that Never Ends?" p. 15.

## South Lebanon Region



## Chapter Two: **Is it Really Occupation?**

In the Israeli public debate, the term "occupation" is not used to describe Israel's involvement in Lebanon.<sup>23</sup> Thus, when the Israeli public uses the term "occupied territory," it refers only to the West Bank and the Gaza Strip. The area Israel controls in South Lebanon is called "the security zone." This term is misleading, giving the false impression that Israel does not occupy South Lebanon and that the IDF's presence in the area does not oppress civilians or obligate Israel to comply with international humanitarian law.

On 1 April 1998, the Ministerial Committee on Security Matters adopted the 1978 decision of the UN General Assembly calling on Israel to withdraw from South Lebanon. By adopting this decision, the government explicitly recognized that Israel controls South Lebanon. The press release issued the same day of the decision stated that, "The government of Israel calls on the Lebanese government to open negotiations in accordance with Resolution 425 of the UN General Assembly to return control of *the area now under IDF control* to the Lebanese government" (our emphasis).

However, before the Supreme Court, the State tries to blur this explicit determination. The State Attorney's Office's primary line of defense in its responses to the High Court in petitions relating to Israeli human rights violations in Lebanon is that, although the IDF maintains a limited presence in South Lebanon to protect Israel's northern border, that presence does not reach the level of "effective control," a requisite component of "occupation" according to international law.<sup>24</sup>

This chapter briefly discusses the relevant legal context of Israel's occupation of South Lebanon, which, contrary to the State's position, defines Israel as an occupying power in South Lebanon. This chapter presents certain features of Israel's presence in South Lebanon, clearly indicating its effective control of the area. This chapter also discusses and

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23. This chapter is based in large part on *Al-Khiam*. See footnote 15.

24. The first affidavit in response in *Al-Khiam*, pars. 17, 19, and 27, submitted by attorney Malchiel Blass on behalf of the State Attorney's Office on 21 April 1999 (hereafter: the first affidavit).

refutes the contention often voiced by Israel that the SLA is not subject to Israeli authority, but is an ally acting in limited cooperation with the IDF for its own independent reasons.

## Effective Control

The legal basis for determining whether an area is considered occupied territory is article 42 of the Hague Regulations, of 1907. These regulations are part of customary international law, and, therefore, comprise part of Israeli domestic law.<sup>25</sup> The article states:

Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.

From a legal perspective, occupation of territory does not require the hostile army to establish a military government in the occupied area, as was done in part of the territory occupied in 1967. In other words, even if Israel were not involved with civilian life in South Lebanon - which is not the case - its ability to exercise authority and its effective military control makes it an occupier and subject to the obligations that status entails. Israel's Supreme Court stated this clearly:

The application of the third part of the Hague Regulations [in which article 42 appears] and the application of the parallel provisions of the Fourth Geneva Convention are not conditioned on establishment of a special organized system bearing the form of a military government. The duties and powers of the military, which result from its effective occupation of a certain territory, are created as a result of military control of the territory.<sup>26</sup>

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25. Hague Regulations Respecting the Laws and Customs of War on Land, 1907. The High Court of Justice has considered the Hague Regulations part of customary international law since its decision in the Beit-El case (HCI 606, 610/78, *Suleiman Tufiq Oveh et al. v. Minister of Defense et al.*, *Piskei Din* 33(2) 113, 120-122).

26. HCI 102/82, *Tsemel et al. v. Minister of Defense et al.*, *Piskei Din* 37(3) 365, 373.

The are several indicators of Israel's effective control in South Lebanon:

1. As will be shown below, the SLA is an important means of ensuring effective control and acts in subordination to Israeli authorities.
2. Israel established in South Lebanon twelve encampments staffed by IDF soldiers, who conduct ongoing military operations in the area.<sup>27</sup> Also, in an affidavit to the High Court of Justice, the State admitted that three of the IDF bases in Lebanon were established within villages.<sup>28</sup> The ability to establish and operate facilities in another state and close to a civilian population clearly indicates effective control of the area.
3. Israel performs civil administration functions, supplies necessary services to the local population, and invests in infrastructure. Brigadier (Res.) Yossi Peled, who served as OC Northern Command from 1986 to 1991, indicated the spheres in which Israel affects civilian life in South Lebanon:

We invested large sums in the security zone's civilian infrastructure. We built roads, schools, a water system, a telephone system; we found jobs for residents of the security zone and held summer camps for their children... We invested large sums in the civilian infrastructure because we wanted Lebanese residents to consider living in the security zone preferable to living elsewhere because of its economic advantages.<sup>29</sup>

Reuven Ehrlich, currently deputy coordinator of government activities in Lebanon, explicitly noted that Israel attached great importance to relations with the local population, and thus invested greatly in employment, infrastructure, and health. According to Ehrlich, Israel's investment was made so that the population "would not assist terrorists,...

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27. Attorney Malhiel Blass, of the State Attorney's Office, provided this information in a letter to attorney Dan Yakir, of The Association for Civil Rights in Israel, on 6 December 1999, in response to questions Yakir had asked the State Attorney's Office in *Al-Khiam* (hereafter: the State Attorney's Office's answers). See the answer to question 1(C).

28. The first affidavit, par. 17.

29. Yossi Peled, "Background to the IDF's Presence in the Security Zone" (in Hebrew), *The Security Zone in Lebanon: A Renewed Look* (Leonard Davis Institute, Hebrew University, Jerusalem, December 1997), p. 32.

and would give the SLA a firm foundation.”<sup>30</sup> Former Defense Minister Yitzhak Mordechai noted in a parliamentary debate that the IDF paved hundreds of kilometers of roads in South Lebanon so that “IDF and SLA soldiers could move freely in the security zone.”<sup>31</sup>

Israel established a department for civilian assistance, a part of the IDF's Liaison Unit for Lebanon (LUL). To strengthen relations and increase the feeling of trust between the parties, LUL representatives meet with the mukhtars of the villages in South Lebanon and promise wide-scale assistance to the civilian population.<sup>32</sup> According to the State Attorney's Office, in 1995-1999, Israel spent \$39.2 million in assisting the civilian population in South Lebanon.<sup>33</sup>

4. The IDF and SLA impose various restrictions on the movement of the civilian population in the occupied area in South Lebanon. Five checkpoints manned by SLA forces have been set up along the border separating the “security zone” from the rest of South Lebanon. In order to cross this border in either direction, residents of the occupied zone must obtain entry and exit permits issued by the SLA<sup>34</sup>. Human Rights Watch obtained samples of these permits. Symbols of the IDF and LUL appear at the top, and some of the forms are written in Hebrew (see the Appendix).

5. Israel demolished houses in the “security zone” without any official body being able, or even attempting, to prevent it. For example, on 7 January 1999, the IDF demolished sixteen abandoned houses in Arnon Village, on the border of the “security zone,” following explosions nearby. Israel's representative on the group monitoring the Grapes of Wrath Understandings (see Chapter Five) approved the demolitions, arguing that

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30. Ehrlich, “The Concept of the Security Zone,” p. 16.

31. “Proposal to Agenda: Building Bypass Roads in South Lebanon,” Knesset session 167, 14 January 1998. The State argued to the High Court of Justice, in the first affidavit, that paving bypass roads “indicates the lack of effective control by the IDF in the populated area of towns and villages in South Lebanon.” This argument is surprising, since no state can pave a road in another state without the latter's consent, even in unpopulated areas, unless the state paving the road has effective control of the area.

32. Eitan Rabin, “IDF Detained Lebanese Civilians,” *Ha'aretz*, 21 September 1997.

33. State Attorney's Office Answers, answer to question 6.

34. For further discussion on this subject, see Chapter Four.

the demolitions were legitimate because the houses had served as a Hizbullah base of operations.<sup>35</sup> On 15 January 1998, the IDF demolished a house in Daisa Village, located in the central sector of the occupied zone. Following the action, the IDF Spokesperson stated that, "the house belonged to a person who was involved in an attack."<sup>36</sup> In a letter to B'Tselem, the International Law Department of the IDF's Office of the Military Advocate General confirmed that the IDF and SLA demolish houses for military needs.<sup>37</sup>

6. As will be described at length in Chapter Three of this report, IDF and SLA forces regularly detain South Lebanese civilians and hold them in the occupied territory and within Israel.

## **SLA Subordination to Israeli Authorities**

Israel does not deny its close cooperation with the SLA. An affidavit submitted by the State Attorney's Office to the High Court of Justice states that, the "IDF and SLA coordinate their military activity, because the two forces are fighting the same enemy."<sup>38</sup> This affidavit gives the impression that the two forces are equal partners. However, many statements have shown that, in reality, the SLA is completely subordinate to Israeli authority. For example, former OC Northern Command Yossi Peled described how the IDF fashioned the image of the SLA according to Israel's needs:

We began a revolution in the SLA... We decided to make the SLA into an army: basic training would be basic training, there would be

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35. Monitoring committee chairperson's report on meetings held between 11-14 January 1999 in Neqora. Contrary to the opinion of the Israeli representative, the Committee found that "demolition of civilian property breaches the understandings."

36. *Ha'aretz*, 16 January 1998. One of UNIFIL's periodic reports, of November 1995, stated that the IDF and SLA had demolished approximately twenty houses in Bet Yahoun Village, and that the residents had been given only a short time to vacate their homes. Often the houses were demolished while personal property remained inside. Report of the Secretary General of the United Nations Interim Force in Lebanon, S/1995/595, article 10.

37. Letter of 11 October 1999 from Col. Daniel Reisner, assistant to the Military Advocate General for international law matters.

38. The first affidavit, par. 20.

courses for officers. We replaced their instruments and gave them devices enabling them to see at night. We also set goals for the SLA. For the first time, we assigned the SLA missions: to maintain encampments, defend them, open routes and night crossings. We explained that activity outside the security zone is not the SLA's business.<sup>39</sup>

On 12 March 1997, MK 'Azmi Bishara made a parliamentary query to the Minister of Defense regarding an article in *Ha'aretz* that stated that Israel pays salaries to SLA soldiers, trains them, and supplies them with weapons and equipment. In response, the Minister of Defense admitted that Israel regularly provides the SLA with military weapons and equipment, and pays salaries to SLA soldiers. In response to a question on harm to civilians by the SLA, the Defense Minister stated that, "the SLA takes care not to harm civilians and to follow the Grapes of Wrath Understandings, in compliance with clear Israeli policy."<sup>40</sup>

In *Al-Khiam*, the State Attorney's Office revealed that, between 1995 and 1999, Israel transferred \$108.2 million to finance the SLA. What percentage of the total amount of SLA financial resources this amount represents is, according to the State Attorney's Office, "unknown."<sup>41</sup>

The affidavit of the head of the IDF's operations department, Major General Dan Halutz, which the State Attorney's Office submitted to the High Court in *Al-Khiam*, describes relations between the IDF and the SLA:

Israel assists the SLA, in part, with finances, weapons, and maintenance. In the past, the IDF also assisted in training SLA soldiers, and the SLA even held exercises in Israel. However, for some six years the SLA has been training its soldiers in various courses... It should be noted that professional in-service training for SLA soldiers, in the field of navigation, for example, is conducted within Israel.<sup>42</sup>

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39. Peled, "Background of the IDF's Presence in the Security Zone," p. 32.

40. Letter of 23 April 1997 from Minister of Defense Yitzhak Mordechai to MK Bishara.

41. State Attorney's Office Answers, answers to questions 7 and 8.

42. Par. 20 of the affidavit.

A soldier who served in LUL from 1991 to 1994 described in his testimony to B'Tselem the command structure of the IDF and SLA:

LUL is constructed in a manner duplicating the SLA units. It is tantamount to a shadow organization that supervises and commands the SLA. For every SLA officer, there is a LUL officer who instructs and supervises him. Just as the SLA is primarily divided into eastern and western commands, LUL is divided into these two sectors. The "shadow" of the SLA security apparatus is not found in LUL but in the GSS... Regarding Al-Khiam Prison, LUL has an instructor from the military police who advises the SLA jailers and administrators of Al-Khiam.<sup>43</sup>

According to a report in the Israeli press, following the killing in February 1999 of the commander of LUL, Brigadier General Erez Gerstein, the Israeli GSS also detained persons in villages in the eastern part of South Lebanon. Among those detained were three SLA soldiers, among them a senior official. The three were suspected of providing information to the Hizbullah on IDF troop movements in the security zone.<sup>44</sup> The GSS's ability to detain SLA personnel, interrogate them, demand that they describe their activities, indicates not only that the IDF has effective control of the area, but that the SLA is subordinate to Israel. The absence of opposition or protest by SLA heads is clear indication that they have accepted their subordinate role and the authority of Israel to act in this manner.

On the matter of Israel's responsibility for SLA acts, the conclusions of the governmental commission that investigated the events at Sabra and Shatila refugee camps are relevant. The Commission determined that Israel was indirectly responsible for the massacre committed in these camps by the Christian Falangists. The determination was based, in part, on the relations that existed between Israel and the Falangists, which were comparable in nature to IDF-SLA relations - collaboration, with a certain degree of subordination of the Falangists to Israel, and Israel's supervision

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43. The name of the soldier is on file at B'Tselem. He gave his testimony to Yehezkel Lein at B'Tselem's offices on 13 September 1999.

44. Alex Fishman, and Eitan Glickman, "Spies in SLA's Upper Echelon," *Yediot Aharonot*, 22 March 1999.

over them. Israel supplied the Falangists with weapons and equipment and trained its personnel. Taking into account these relations, and that Israel decided that the Falangists would enter the refugee camps, the Commission held:

If it is indeed found that those who decided to let the Falangists enter the camps should have, based on information they had and on information that was public knowledge, anticipated the existence of the risk of a massacre, but took no measures that should have been taken to prevent the danger, or at least significantly diminish the likelihood that such would occur, the decision-makers and those who executed the actions are indirectly responsible for what ultimately happened, even if they did not intend the result.<sup>45</sup>

It should be noted that the Commission refrained from explicitly establishing the legal basis for this responsibility, and established the indirect responsibility without finding that West Beirut was under occupation:

It may be that, from a legal perspective, responsibility is not absolutely clear, following the lack of clarity as to the status of Israel and its forces in South Lebanon... Even if these legal norms [applying to occupation] are not valid in the situation in which the Israeli government and the forces acting pursuant to its orders at the time of the events were found, based on the obligations applying to every civilized country and morals established by civilized peoples, the problem of indirect responsibility cannot be ignored.<sup>46</sup>

Thus, according to the Commission's reasoning, even if occupation does not exist, Israel cannot evade its indirect responsibility for acts of the Christian Falangists with which Israel collaborated. A similar conclusion is even more valid in the case of Israeli responsibility for SLA acts in the "security zone," where the many indicators presented in this chapter attest to an occupation.

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45. Report of the Commission of Inquiry into the Events in the Refugee Camps in Beirut (1993), par. 71, pp. 65-66.

46. *Ibid.*

## Summary

As the occupier of South Lebanon, Israel has overall responsibility for the protection of human rights in the area, and is obligated to take the necessary action to ensure them. Israel's legal duty and the rights of civilians in the occupied territory are established by international humanitarian law, as stated in the Hague Regulations and the Fourth Geneva Convention.<sup>47</sup> Two additional legal frameworks obligate Israel to protect the human rights of persons in the occupied zone in South Lebanon.

The first framework is composed of the various international instruments to which Israel is party, such as the International Covenant on Civil and Political Rights (1966), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984), and the Convention on the Rights of the Child (1989), which apply in South Lebanon. For example, article 2(1) of the Covenant on Civil and Political Rights stipulates that, "each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant..." The expression "subject to jurisdiction" refers to all territories and persons subject to the effective control of the state.<sup>48</sup> The UN Human Rights Committee, which oversees implementation of this Covenant, explicitly held that Israel must implement the Covenant in areas subject to belligerent occupation, including the occupied territory in South Lebanon.<sup>49</sup>

The second framework is Israeli law, primarily the Basic Law: Human Dignity and Liberty. State authorities must comply with the principles of Israeli constitutional and administrative law wherever those authorities operate. Section 11 of the Basic Law: Human Dignity and Liberty provides, "All governmental authorities are bound to respect the rights under this Basic Law." Like the other principles of Israeli public law, the

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47. Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 12 August 1949.

48. See, for example, Eyal Benvenisti, "Responsibility for the Protection of Human Rights Under the Interim Israeli-Palestinian Agreement," *Israel Law Review* (1994) 297, 309.

49. Concluding Observations of the Human Rights Committee: Israel (CCPR/C/79/Add93), 4 August 1998.

Basic Law is not territorial, but personal. That is, it applies to governmental authorities wherever they operate.<sup>50</sup>

The fact that most violations of human rights in South Lebanon are committed by SLA personnel in no way reduces Israel's responsibility, given that the SLA is subordinate to Israeli authorities. Thus, the SLA, which performs governmental acts in South Lebanon on behalf of and under the supervision of Israel, comprises an "authority" within the meaning of the term in section 11 of the Basic Law: Human Dignity and Liberty. For this reason, all provisions of the Basic Law apply to SLA actions. In the words of Supreme Court President Aharon Barak:

The administrative classification of a person or body is not decisive. Being part of the organic structure of the state or local government is not the determinative criterion... what makes a person or body a governmental authority is the governmental power it holds. A "private" person to whom the law grants governmental power is "a governmental authority" for the purposes of executing the governmental power granted to it.<sup>51</sup>

Furthermore, the Fourth Geneva Convention not only obligates the occupier to respect the rights of civilians in the occupied territory, it also requires that the occupier ensure that third parties acting on its behalf also respect those rights.<sup>52</sup>

It should be explained that Israel's legal and moral responsibility for acts of the SLA is not derived only from South Lebanon being occupied territory, but from the subordination of the SLA to Israel. According to

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50. On the matter of personal application of the principles of law, Justice Barak held that, "every Israeli soldier carries in his knapsack the rules of customary public international law, which deal with the laws of war, and the fundamental principles of Israeli administrative law. HCI 393/82, *Jam'iyyat Iskan al-Mu'aliman al-Mahddudat al-Mas'uliyah, Teachers' Housing Cooperative Society, Duly Registered at Judea and Samaria Headquarters v. Commander of IDF Forces in Judea and Samaria, Piskei Din 37(4) 785, 810.*

51. Aharon Barak, *Judicial Interpretation* (Jerusalem: Nevo, 1994), p. 449.

52. Article 29 provides: "The Party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred."

international law, even if the IDF was not present at all in South Lebanon, and the area was controlled by the Lebanese government, Israel would still bear responsibility for SLA acts. This responsibility results from its control of the SLA.

In this context, the international court empowered to try persons responsible for war crimes committed in the former Yugoslavia referred in its recent decision to a situation similar to the one discussed in this report. The court had to determine whether the Yugoslav republic (Serbia and Montenegro of today) was responsible for war crimes committed by the Serb militia in Bosnia-Herzegovina during the civil war that took place there in 1991-1995. For this purpose, the court defined the criteria, based on international law, for imposing legal responsibility on a state for acts committed by groups identified with that state but which are not part of it from an organizational or formal perspective:

Under international law it is by no means necessary that the controlling authorities should plan all the operations of the units dependent on them, choose their targets, or give specific instructions concerning the conduct of military operations and any alleged violations of international humanitarian law. The control required by international law may be deemed to exist when a State (or, in the context of an armed conflict, the Party to the conflict) *has a role in organizing, coordinating or planning the military actions* of the military group, in addition to financing, training and equipping or providing operational support to that group. Acts performed by the group of members thereof may be regarded as acts of *de facto* State organs regardless of any specific instruction by the controlling State concerning the commission of each of those acts (emphasis in the original).<sup>53</sup>

Based on this, the court ruled that the Yugoslav republic should be deemed responsible for war crimes committed by the Serb militia in Bosnia-Herzegovina, which acted on its behalf.<sup>54</sup>

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53. Tadic IT-94-1, *Prosecutor v. Dusko Tadic*, Appeal Chamber, 15 July 1999, par. 137. The decision is also available on the Internet (<http://www.un.org/icty/tadic/appeal/judgment/Tadic9julyacc.html>).

54. *Ibid.*, pars. 146-162.

Employing the court's criteria to the relations between Israel and the SLA leads to a similar conclusion. Furthermore, the responsibility of Israel for SLA acts is clearer than that of Yugoslavia for acts of the Serb militia in Bosnia-Herzegovina. This is so because, as was argued in this chapter, in addition to control over the SLA, the IDF is the power occupying South Lebanon - a result of its effective control over the territory - and thus bears overall responsibility for protecting human rights in the area.

## Chapter Three: **Torture and Unlawful Detention**

Over the years, Israeli and SLA security forces have detained hundreds of Lebanese civilians, residents of South Lebanon, most on suspicion of violently opposing the occupation or providing assistance to groups fighting against the occupation.

Some of the detainees are held extra-judicially in Al-Khiam Prison, in South Lebanon. The prison conditions are inhumane and contravene international law. Upon release, almost all of the detainees reported that they were severely tortured. Israel routinely denies any responsibility for what occurs in the prison.

Over the years, Israel has also transferred South Lebanese civilians to Israeli prisons. Some of them were tried by military tribunals and are serving their sentences.<sup>55</sup> However, some of those held in Israel have already completed their sentences, and others were never tried. These Lebanese civilians are being held pursuant to administrative detention orders, in contravention of basic norms of international law. In practice, they are hostages and serve, according to the state, as "bargaining chips" for the return of Israeli POWs and MIAs from the war in Lebanon, the best known being the navigator Ron Arad.

### **Al-Khiam**

Al-Khiam Prison, overlooking the town of Al-Khiam, lies in a structure built in 1933 by the French Mandate in Lebanon. The current prison cells were originally planned as stables for horses. After the Litani operation, of 1978, the SLA received the structure for its use and turned it into its headquarters and an interrogation center. In 1985, when most IDF forces withdrew from Lebanon, many detention camps were closed, and most of

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55. B'Tselem requested from the Prisons Service figures on the number of convicted Lebanese prisoners who are being held in Israel. The Prisons Service has not yet replied.

the Lebanese detainees were transferred to Al-Khiam, which began to function as a prison.<sup>56</sup>

According to figures of a Lebanese human rights organization, The Monitoring Committee of Lebanese Detainees in Israeli Prisons (hereafter the Lebanese Monitoring Committee), on 9 October 1999, 143 Lebanese civilians were held in Al-Khiam Prison.<sup>57</sup> Detention of these civilians is arbitrary and violates all standards of due process, since no detention warrant is issued, they are not brought before a judge, nor informed of the suspicions against them. In early October, two minors (aged 14 and 15) and three elderly persons (over 65) were among the detainees held in Al-Khiam. At least six of the current detainees have been held in Al-Khiam Prison for over a decade, and at least twelve others have been imprisoned there from five to ten years.

### Israeli Control

In affidavits submitted by the State Attorney's Office, press releases of the IDF Spokesperson, and statements of government ministers, Israeli authorities deny any responsibility for what occurs in the prison. In its response in *Al-Khiam*, the State contended that "Al-Khiam facilities are administered, operated, and protected by Lebanese serving in the SLA. The interrogators operating in the facility are also members of the SLA."<sup>58</sup> However, facts revealed over the years indicate significant Israeli involvement:

- According to an investigative report in the press, Israel was conspicuously involved in the ongoing administration of the prison at the beginning. Over the years, Israel's involvement in the daily administration diminished, but its position as ultimate supervisor was preserved.<sup>59</sup> This

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56. Aviv Lavie. "Camp in Which People are Concentrated," *Ha'ir*, 17 January 1997.

57. Unless otherwise noted, all the information of the Lebanese Monitoring Committee is taken from its website: <http://www.followupcsid-ip.org.lb>. The number of detainees changes frequently, as detainees are added and others released. Over the past three years, the number of detainees has remained approximately 140 at any given time.

58. The first affidavit, par. 34.

59. Lavie, "Camp in Which People are Concentrated."

supervision is conspicuous in, among other things, decision-making regarding release of detainees. For example, in June 1998, the International Committee of the Red Cross (ICRC) mediated a prisoner exchange, in which fifty detainees from Al-Khiam were exchanged for the body of Israeli soldier Itamar Ilia. Israel was the beneficiary of the deal and the party that agreed to the exchange.

- ICRC visits to Al-Khiam Prison stopped on 10 September 1997. Israel made the decision to prohibit these visits (see below) after twelve Israeli soldiers were killed in South Lebanon. Visits recommenced following an Israeli directive, after the body of Ilia was returned. The ICRC addressed its protest to the Israeli authorities, pointing out their obligations under the Fourth Geneva Convention.<sup>60</sup>

- According to Amnesty International, a significant portion of the detainees in Al-Khiam were arrested and brought to the prison by IDF soldiers. Also, many detainees were transferred from Al-Khiam to Israel for interrogation, prosecution, or medical treatment.<sup>61</sup> Testimonies of released detainees indicate that Israelis often were present during interrogations conducted by the SLA. In an affidavit submitted to the High Court of Justice in Al-Khiam, the state admits that "certain interrogees were given lie detector tests by the Israeli side as part of security cooperation with the SLA."<sup>62</sup> According to the State Attorney's Office, in 1998, five or six such lie detector tests were administered, and from the beginning of 1999 to 9 November 1999, twenty-four tests had been given.<sup>63</sup>

- Major General Halutz, head of the IDF Operations Department, admitted in his affidavit submitted to the High Court in Al-Khiam that IDF officers visit Al-Khiam Prison every month to pay the jailers' salaries. He promised that from that month forward, the salaries would be paid in a different manner.<sup>64</sup> If implemented, this change would not affect Israel's responsibility as the party financing the SLA and Al-Khiam in particular.

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60. Yosef Algazi, "Red Cross Recommences Visits to Al-Khiam Prison," *Ha'aretz*, 12 July 1998.

61. Amnesty International, *Israel's Forgotten Hostages: Lebanese Detainees in Israel and Khiam Detention Center* (July 1997).

62. The first affidavit, par. 38.

63. State Attorney's Office's Answers, answer to question 12.

64. Par. 54 of the second affidavit

The total amount of the salaries that Israel transfers to pay jailers at Al-Khiam Prison reaches some US\$ 30,000 a month.<sup>65</sup>

● In the same affidavit, Major General Halutz stated that:

GSS personnel collaborate with SLA personnel, and even help them in professional instruction and training, but they do not take part in the frontal interrogations of detainees. I have been informed that GSS agents meet several times a year with SLA interrogators in Al-Khiam Prison. For example, from 1 January 1999 to the end of July, GSS agents visited the prison only three times.<sup>66</sup>

● An IDF soldier who served in a combat unit in Lebanon stated that from time to time soldiers in the unit were requested, as part of their military operations, to guard GSS agents during their visits at the prison.<sup>67</sup>

### **Torture and Lack of Medical Treatment**

Human rights organizations such as Amnesty International<sup>68</sup> and the Lebanese Monitoring Committee report the use of severe torture during interrogations in the prison. These reports are based on testimonies of released detainees. According to these reports, which are expressed in the conclusions of the UN Commission on Human Rights,<sup>69</sup> the methods of torture include electric shock, hanging from a bar such that the toes barely touch the floor, beating and kicking, and threats of rape of female relatives of the interrogees. According to the Lebanese Monitoring Committee, since

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65. The amount of the salaries was taken from State Attorney's Office Answers, answer to question 14.

66. The second affidavit, par. 51.

67. The soldier, who wished to remain anonymous, gave his testimony, as well as photos he took of the prison, to *Ha'aretz* journalist Yosef Algazi. See "Testimony from Al-Khiam Prison," *Ha'aretz*, 25 July 1997.

68. Amnesty International, *Israel's Forgotten Hostages*.

69. Commission on Human Rights Resolution 1998/62.

1985, at least four detainees died as a result of torture during interrogation.<sup>70</sup>

The current commander of SLA's western brigade and head of its security apparatus (see Chapter Four), Col. 'Akel Hashem, in an interview with *Ha'aretz*, essentially admitted that torture is used against detainees in the prison:

If I were to tell you that there are no beatings going on there, I would be lying. They conduct interrogations the way they should be done. If someone made a mistake, he is interrogated in the proper manner. A bit of force, a bit of fear. It's an investigation, right? If someone conceals an explosive charge or fires at an IDF convoy, how can you get information out of him. By asking nicely? By giving him a cup of coffee? There are many ways to get the truth out of a person.<sup>71</sup>

According to released detainees, torture is used when they arrive at the prison and generally lasts from ten days to three months, during which time the interrogations are conducted. The prisoners are kept in dark isolation cells of 90cm x 90cm.<sup>72</sup> Daher Nasrallah, of Huleh Village, was detained on 7 April 1992 by SLA forces, taken to Al-Khiam, and held there without trial until 7 January 1994. Following his release, he described the interrogations he underwent:

One of the SLA security agents, 'Ali 'Iyub, came to Qila Village's school, where I teach. He told me, "We need you at Khiam." He took me to Khiam Prison, where they accused me of inciting my students against Israeli occupation troops and organizing opposition groups. During the interrogation, they used the following methods: beating me all over with a bar while I was bound to a pole, electric shock to the tips of my fingers, and

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70. The dead are: 'Ali Hamseh, of Jamija Village, who was detained on 17 February 1986 and died on 10 March 1986; Hussein Mahmud, of Holeh Village, who was detained on 5 May 1989 and died on 6 July 1989; 'Ali al-Iul, of Dibin Village, who was detained on 11 December 1994 and died on 25 December 1994; Yusuf Sa'ad, of Bina libil Village, about whom precise details on the dates of his detention and death could not be obtained.

71. Ronen Bergman, "OK. Abandon Us," *Ha'aretz*, 20 October 1999.

72. Amnesty International, *Israel's Forgotten Hostages*, p. 13.

pouring ice-cold water over me and not letting me change my clothes. My body was black-and-blue from the beatings. For the first two months, they kept me in total isolation.<sup>73</sup>

Sadallah Heydurah, of Mais al-Jabel Village, was detained on 1 September 1986, taken to Al-Khiam Prison, and released ten years later, on 21 July 1996. Throughout that period, no charges were filed against him and he was not prosecuted. In his testimony to the Lebanese Monitoring Committee, he stated:

During the interrogations they attached an electric shock to my tongue and penis, and poured freezing water on me [...] To increase the pressure on me, they imprisoned my father in Al-Khiam for eight months. Once, when it was snowing, they hung me naked on a pole for six hours.

On 7 November 1988, the SLA detained Suha Bashara, aged twenty-one, on suspicion of attempting to kill the SLA commander, General Lahad. She was held in Al-Khiam for almost ten years, although she was never charged or tried for any offense. In December 1998, three months after being released, she gave an affidavit to attorney Leah Tsemel describing what she underwent while imprisoned. She made these comments about the interrogation:

Immediately upon arriving at Khiam, they took me to Office 4, and threw me onto the floor. I was still shoeless [they had taken her shoes earlier]. An interrogator, Samer, was in the room... He apparently was assigned my case. He was the chief interrogator. Others also interrogated me, but he was the principal one. He interrogated me and already on the first night he used electric torture on me. Six times they tortured me this way. It was Samer who did it each time. The electricity came from the manually-operated military portable telephone. They tied the telephone wires to my fingers. They interrogated me for three months, three sessions a day usually, and also sometimes at night.<sup>74</sup>

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73. The testimony was given to the Lebanese Monitoring Committee a few days after his release.

74. The affidavit was given in Paris on 8 December 1998.

Suleiman Ramdan, a resident of Ba'al-Baq, in Southern Lebanon, is one of the petitioners in *Al-Khiam*. Joint IDF-SLA forces detained him in September 1985. He was injured while in detention, and later transferred to Al-Khiam, where he was severely tortured by use of electric shock, whippings, and hanging from a bar. Because he did not receive proper medical treatment, gangrene developed in his left leg. Twelve days later, he was taken to a hospital in Israel, where his leg was amputated. He was then returned to Al-Khiam and held in solitary confinement - with no sunlight or artificial light - for three years. Officials at the prison again neglected his medical needs, and his condition worsened.<sup>75</sup>

On 13 December 1998, Uri Elitzur, former director of the Prime Minister's Office, wrote to Physicians for Human Rights that Ramdan had recently received a prosthesis and was receiving regular medical care from SLA physicians. However, the Lebanese Monitoring Committee reports that Ramdan is unable to use the prosthesis, because the jail cells are overcrowded, and that his medical condition remains grave.

The Lebanese Monitoring Committee reported that one of the women imprisoned in Al-Khiam Prison, thirty-six-year-old Najwah Sam'at, of 'Inata Village, was pregnant when she was detained. In October 1999, she was reported to be suffering from frequent bleeding, as the prison conditions are not suitable for a person in her condition, and that she does not receive proper medical attention.

## Physical Conditions

Testimonies of released detainees indicate that the physical conditions at Al-Khiam Prison, at least until 1995, when the ICRC conducted its first visit, were shameful and inhumane. The most conspicuous features are overcrowding, filth, rarely being allowed to shower, dark and wet cells, cold, being required to relieve themselves into pots in the cells, and insufficient food.<sup>76</sup>

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75. *Al-Khiam*, par. 3.

76. See, for example, Lebanese Monitoring Committee website, *ibid.*; Lavie, "Camp in Which People are Concentrated;" Amnesty International, *Israel's Forgotten Hostages*, pp. 12-13.

In the decade from 1985, when the SLA began to use Al-Khiam as a detention center, to 1995, the authorities did not allow attorneys, independent physicians, judges, the ICRC, and other independent bodies to visit detainees or inspect conditions in the prison. Between 1987 and 1995, the authorities also prohibited relatives of the detainees to visit. In October 1995, the ICRC visited for the first time.<sup>77</sup> In anticipation of this visit, and following it, prison conditions improved somewhat.

Suha Bashara, mentioned above, described the changes implemented in the women's wing of the prison just prior to the visit of the Red Cross:

Shortly before the Red Cross came, they [the prison authorities] altered our facilities. This was sometime around February 1995. They installed toilets, a boiler, a sink, running water, and showers in our rooms. They also constructed a wall between the bathroom and the sleeping area, and brought in beds. I didn't benefit from any of that because I was in solitary, so they only brought me a bed. I continued to use a pitcher as a toilet, and once a day they let me empty it. After the Red Cross came, they let me receive religious books and fiction.<sup>78</sup>

ICRC reports, including those dealing with prison conditions at Al-Khiam, are confidential, and only the relevant country receives a copy. Thus, precise and accurate details of current conditions in the prison are not available, particularly details relating to the male wing, isolation cells, and interrogation cells. Information B'Tselem received from the Lebanese Monitoring Committee indicates that conditions have improved in recent years: showers with hot water have been installed and the prisoners are allowed to receive books from the Red Cross.<sup>79</sup> However, other conditions remain as poor as they were: the drinking water is filthy, causing kidney infections; the food is extremely poor quality, at times spoiled; the food is insufficient; there is insufficient light in the cells; although the physician

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77. As noted above, these visits continued until Israel stopped them in September 1997, demanding return of the body of Israeli commando Itamar Ilia. The ICRC visits recommenced after the body was returned.

78. From her affidavit to attorney Leah Tsemel.

79. Because the Lebanese government does not allow its citizens to communicate with Israelis, this information was provided via Amnesty International.

visits every Tuesday, he only has painkillers to offer the ill prisoners; detainees stay outdoors only some twenty minutes a day; no physical activity is offered; and prisoners are not allowed newspapers, television, or radio.

Relatives of prisoners are allowed to visit, accompanied by the ICRC, once every three months. The jailers carefully monitor the visits, and because of the fear of punishment, few facts describing what occurs within the prison are provided to visiting relatives. A mother of one of the detainees told a reporter from the Lebanese newspaper *Daily Star* that the SLA suspended her visits after she had been interviewed by the media concerning what she had seen in the prison.<sup>80</sup>

Despite the improvement in physical conditions at the prison, the facilities are still woefully below minimal humane standards and UN requirements.<sup>81</sup> The fact that the authorities made the improvements when the ICRC began to visit underscores the importance of visits by external bodies. It should be noted that the Office of the Military Advocate General and the Office of the Coordinator of Government Operations in Lebanon denied requests by The Association for Civil Rights in Israel and HaMoked: Center for the Defence of the Individual to visit the prison. The reason given for the refusal is that Al-Khiam is not controlled by the IDF. In Al-Khiam, the two organizations applied to the Supreme Court to order the State to allow them to visit the prison.

## Judicial Review

Both according to international law and Israeli law, the detention of Lebanese civilians in Al-Khiam Prison with no legal framework whatsoever is patently illegal.

The Fourth Geneva Convention requires Israel to ensure that detention accords with the conditions stipulated in the Convention's criminal

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80. Zayan Khalil, "Young Detainees' Plight Needs More Attention," *Daily Star*, 16 August 1999.

81. These standards are found in the United Nations Minimum Rules for the Treatment of Prisoners, which the UN Economic and Social Council adopted in 1957 and amended in 1977. This instrument is not legally binding.

procedure provisions. Article 71 stipulates the right to due process: "No sentence shall be pronounced by the competent courts of the occupying power except after a regular trial." Article 71 also provides that defendants shall be promptly informed, in writing in a language that they understand, of the particulars of the charges against them, and shall be brought to trial as rapidly as possible. Article 72 states that defendants shall have the right to meet freely with an attorney of their choice.

The right to due process is also secured in the UN Covenant on Civil and Political Rights, ratified by Israel in 1991. Article 9 of the Covenant stipulates the right to liberty and security of person and the protection against arbitrary arrest. It includes the right to be informed of the reasons for the arrest and the charges, and to be promptly brought before a judge.<sup>82</sup> Article 14 of the Covenant regulates the right to due process in criminal matters. It states, for example, that every person charged with a criminal offense has the right to be presumed innocent until proven guilty, to be represented by counsel of his or her choice at all stages of legal proceedings, and the right to defend him or herself in a public hearing before a competent and independent tribunal.

Israel's responsibility to guarantee due process in territory under its effective control is also derived from Israeli statutory law. Denial of a person's liberty without due process is a breach of section 5 of the Basic Law: Human Dignity and Liberty, which stipulates that, "There shall be no deprivation or restriction of the liberty of a person by imprisonment, arrest, extradition or by any other manner." As then-deputy president of the Supreme Court, Aharon Barak held that the right to due process in criminal matters and the prohibition on depriving a person of liberty without implementation of fair and equal procedural rules are derived from the right to liberty.<sup>83</sup>

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82. When it signed the Covenant, Israel recorded its objection to this article, arguing that the state of emergency that has been proclaimed since the founding of the state prevents it, in certain circumstances, from meeting the requirements of the article (see Convention Instrument 1040, volume 31). It is important to note that, although this objection diminishes Israel's obligation regarding due process, it does not allow imprisonment for an indefinite period of persons where no proceeding has been conducted.

83. Crim. Misc. Mot. 527/95, *Ghanelmat v. State of Israel*, *Piskei Din* 49(3) 355, 421.

Like the obligation to ensure due process, the prohibition on torture is also a fundamental principle of international and Israeli law. The UN Convention against Torture, to which Israel is party, unequivocally prohibits the use of torture or any form of cruel treatment or punishment under any circumstances.<sup>84</sup> Other conventions, such as the Covenant on Civil and Political Rights<sup>85</sup> and the Fourth Geneva Convention<sup>86</sup> prohibit torture and other kinds of cruel, inhuman, or degrading treatment or punishment, regardless of the circumstances. Thus, the prohibition on torture and ill-treatment is absolute, and no "unusual" circumstance can justify non-compliance. Israel is party to all of these conventions, and has never objected to the provisions that prohibit absolutely torture and ill-treatment.

Section 2 of the Basic Law: Human Dignity and Liberty states that, "There shall be no violation of the life, body or dignity of any person as such." Section 4 provides that, "All persons are entitled to protection of their life, body and dignity." The torture and cruel treatment described above are inconsistent with these rights. A nine-justice panel of the High Court of Justice recently ruled that the GSS is forbidden to use several interrogation methods, some of them less severe than those used in Al-Khiam. The High Court based its decision, in part, on the fact that those GSS methods are inconsistent with the Basic Law: Human Dignity and Liberty.<sup>87</sup>

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84. Article 2(2) of the Convention against Torture.

85. Article 7 of the Covenant on Civil and Political Rights.

86. Articles 27, 31, and 32 of the Fourth Geneva Convention.

87. HCJ 5100/94. *Public Committee Against Torture in Israel v. The State of Israel and the General Security Service*; HCJ 4054/95. *The Association for Civil Rights in Israel v. The Prime Minister of Israel, The Minister of Justice, the Minister of Police, The Minister of the Environment, and The Head of the General Security Service*; HCJ 6536/95. *Hat'm Abu Zayda v. The General Security Service*; HCJ 5188/96. *Wa'al Al Kaaqua, Ibrahim Abd'allah Ghaneimat, and the Center for the Defence of the Individual v. The General Security Service and The Prison Commander - Jerusalem*; HCJ 7563/97. *Abd Al Rahman Ismail Ganimat and the Public Committee Against Torture in Israel v. The Minister of Defense and The General Security Service*; HCJ 7628/97. *Fouad Awad Quran and the Public Committee Against Torture in Israel v. The Minister of Defense and the General Security Service*; HCJ 1043/99. *Issa Ali Batat v. The General Security Service*.

## Hostages Held in Israel<sup>88</sup>

Israel currently holds twenty-one Lebanese civilians as “bargaining chips” or, in other words, hostages, for the possible exchange of Israeli POWs and MIAs from the Lebanon war, particularly the release or clarification of the fate of Ron Arad.<sup>89</sup> Five of the hostages were released on 26 December 1999. Because they were involved in the legal proceedings mentioned below, the discussion will relate to all twenty-one. Some of the hostages have been imprisoned for more than a decade. For many years, the Israeli authorities maintained strict confidentiality about the matter, and only a few details about some of the prisoners were known to the public.

In March 1998, the Supreme Court allowed publication of a censored version of its decision, which had been given in November 1997, approving the continued administrative detention of ten Lebanese who had challenged the legality of their detention (hereafter: “the principal appeal”).<sup>90</sup> This publication, together with reports of human rights organizations,<sup>91</sup> presented a relatively complete picture of the Lebanese hostages. Although all twenty-one held the same status and were detained for the same purpose, the circumstances in which they were taken hostage can be divided into three categories:

*The first group* is composed of eleven persons, whom the IDF and SLA detained in Lebanon in 1986-1987. They were arrested, brought to Israel and tried in military courts for offenses such as membership in a hostile organization and possession of weapons, and were sentenced to imprisonment for periods ranging from eighteen months to four and a half

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88. Extensive parts of this chapter are based on Eitan Barak, “Under Cover of Darkness: The Israeli Supreme Court and the Use of Human Beings as Bargaining Chips,” 3 *International Journal of Human Rights* (No. 3, Autumn 1999) 1.

89. Despite the fact that the principal decision in this case (see discussion below) relates to a few POWs and MIAs, including MIAs from the “Sultan Yakub” battle of 1982, the State Attorney’s Office has argued, at least from 1994 to the present, that the Lebanese civilians are being held solely for release or information about the fate of Ron Arad (see par. 2 of the judgment given by Supreme Court President Barak, Administrative Detention Appeal (Adm. Det. App.), *John Does v. Minister of Defense*

90. Adm. Det. App., *John Does v. Minister of Defense* (not yet published).

91. More detailed information on each detainee can be found in the reports of Amnesty International and Human Rights Watch cited above.

years. In February 1991, the last of this group completed his prison sentence.

*The second group* is composed of six Lebanese who were captured at the end of 1987 by the Christian militia of Samir Jaj'a, and were imprisoned in Adonis Prison, near Beirut. In May 1990, they were secretly transferred to Israel. Until 1992, Israel denied they were being held. According to Amnesty International, the ICRC accidentally learned about them during a visit to the Ramle Prison hospital, which led the IDF to admit the six were being held.<sup>92</sup> Since the six were never tried, the charges against them, if any exist, are still unknown, nor is it clear why they were chosen to be bargaining chips.

*The third group* is composed of four Lebanese seized by the IDF in two military operations. In the first operation, in July 1989, the IDF took Sheikh al-Karim Obeid from his home in Shibshit Village. Despite various offenses attributed to him in the media, Israel has not prosecuted him. Thus, it is unknown if the offenses he ostensibly committed are the reason he was taken, or whether he was seized for the specific purpose of being a bargaining chip because of his status as a religious leader. At the same time, the IDF abducted two other Lebanese civilians, apparently the sheikh's bodyguards, who are now being held with the seventeen other Lebanese.<sup>93</sup> The second military operation occurred in May 1994. The IDF seized Mustafa Dirani, who was an Amal senior intelligence officer until 1988 and was apparently responsible for holding Ron Arad.

## The Legal Basis

The first group of Lebanese began completing their sentences in 1988. Since Israel wanted to continue to hold these Lebanese civilians, it was necessary to find a new legal basis to hold them. At first, Israel based the detention on the Entry into Israel Law, 5712-1952, which grants the

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92. Amnesty International. *Israel's Forgotten Hostages*, p. 10.

93. However, according to one of the versions, only one of them is a bodyguard, while the second was a young man about to get married who had come to receive the blessing of Obeid and had the misfortune of also being abducted by the IDF. I. Kershner, "Israel's Human Bargaining Chips," *The Jerusalem Report*, 17 August 1998.

Minister of the Interior authority to detain a person awaiting implementation of a deportation order against him.<sup>94</sup> Thus, when each of the members of the first group were released, the Minister of the Interior issued an order of deportation against them. In October 1988, one of these detainees petitioned the High Court of Justice, arguing that the detention orders are illegal because waiting for implementation of the deportation order is not the real reason for the detention.<sup>95</sup> The court set a hearing for May 1991. On the morning of the hearing, the state announced that it had revoked the deportation orders. At the same time, the Minister of Defense signed administrative detention orders against the Lebanese who had until then been "awaiting deportation." Similar orders were subsequently issued against the other Lebanese detainees.

Administrative detention within Israel (in contrast to administrative detention in the Occupied Territories) is executed pursuant to the Emergency Powers (Detentions) Law, 5739-1979 (hereafter: "the Detentions Law").<sup>96</sup> This law empowers the Minister of Defense to detain a person administratively for a period not to exceed six months. The Minister of Defense may extend the order for additional six-month periods indefinitely. The Law is valid only during emergencies formally declared by the Knesset, but the Knesset has made such a declaration continuously since the founding of the state. The Law grants this authority to the Minister of Defense if the minister has "a reasonable belief that state security or public security requires that a specific person be detained."<sup>97</sup> Case law emphasizes that administrative detention may not be used as a means of punishment, but is "a preventive means against an anticipated danger resulting from the conduct of the suspect."<sup>98</sup> Justification for detention "is dependent on virtual certainty that refraining from imposing detention will lead to meaningful harm to state security and public security."<sup>99</sup> The Law also provides for judicial review of the detentions,

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94. Entry into Israel Law, 5712-1952, section 13(c).

95. HCl 585/89, *Hassin Fahad Karim Daquq et al. v. Minister of the Interior*.

96. For a discussion on administrative detention in the Occupied Territories pursuant to military orders, see B'Tselem, *Prisoners of Peace: Administrative Detention During the Oslo Process* (June 1997)

97. Section 2(a) of the Detentions Law.

98. Adm. Det. App. 4/94, *Ben Horin v. State of Israel, Piskei Din* 48(5) 329, 336.

99. Adm. Det. App. 4/96, *Ginsburg v. State of Israel, Piskei Din* 50(3) 221, 223.

pursuant to which the president (or deputy-president) of the district court must approve detentions and their extensions, and examine at three-month intervals continuation of the detention.

The Detentions Law does not define "state security" or indicate what comprises a "danger" to state security. The state's position is that return of the POWs and MIAs from the war in Lebanon is an integral part of "state security," and that holding Lebanese civilians as bargaining chips for that purpose is allowed under the Detentions Law. The state argues that the law also allows detentions where the danger to state security is not connected personally to the particular individual.

The Detentions Law enables detainees to appeal the district court's decision to the Supreme Court. Therefore, after the district court repeatedly accepted the state's position and approved the administrative detention, several such appeals were made over the years. All were denied. In each decision, the Supreme Court held that return of POWs and MIAs is included within the definition of state security, and it is permissible to detain a person for this purpose, even if the person is not responsible for nor has any connection to the fate of the POWs and MIAs.<sup>100</sup>

In September 1994, the "principal appeal" was submitted, by Zvi Rish,<sup>101</sup> to the Supreme Court against the decision of the district court to approve

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100. Until 1998, the hearings in the district courts and the Supreme Court dealing with the detentions were secret. Some information about these proceedings was first published in the Supreme Court's decision on the Lebanese detainees, which was allowed for publication in 1998.

101. Section 8(B) of the Detentions Law allows the Minister of Justice to limit by order the right of defendants in proceedings under the law to be represented by persons approved, without restrictions, to serve as defense counsel in military courts, and the Minister of Justice has exercised this authority. Thus, beginning in the middle of 1991, when the Lebanese began to be held pursuant to the Detentions Law, their connection with attorneys Leah Tsemel and Jawad Boulous, who handled their case when they were detained on another legal ground, was severed. For two years, a number of state-appointed attorneys appointed represented them, and in 1993, attorney Zvi Rish, who holds the requisite approval, took over the handling of their cases. In acting as their attorney, Rish is subject to severe secrecy regulations, which limit his ability to provide information about their case.

the detention. The three-justice Supreme Court panel was headed by Supreme Court President Barak.<sup>102</sup>

The first hearing was set for February 1996, almost eighteen months after the appeal was filed. The decision was given, as noted above, in November 1997. In a 2-1 decision, the Court denied the appeal. In his decision, Justice Barak wrote:

I firmly believe that return of the POWs and MIAs in and of itself is a goal and interest included within state security... Following careful study of the material before me and the arguments of the parties, I am convinced that this harm [to human dignity and liberty] - as harsh and painful as it is - is necessitated by the security and political reality and reflects the proper balance under the circumstances between liberty of the individual and the necessity to preserve state security.<sup>103</sup>

Justice Dorner wrote the minority decision. She did not reject the legitimacy of holding hostages to attain the release of POWs and MIAs, but ruled that the Detentions Law, on which the state relies, is inappropriate for this purpose. She stated that, if her opinion were accepted, the Court would "postpone for a reasonable period of time the release of the appellants, in order to enable the state to examine its authority and interest in holding the appellants pursuant to another statute."<sup>104</sup>

In early 1998, Deputy President of the Supreme Court Shlomo Levin ruled in favor of the application of the appellants' attorney to hold an additional hearing before a nine-justice panel. In January 1999, the panel met *in camera*, but has not yet given a decision.<sup>105</sup>

In June 1999, permission was granted to publish that, a year earlier, in June 1998, the President of the Tel-Aviv District Court, Judge Menachem

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102. Adm. Det. App. 10/94, *John Does v. Minister of Defense*. The other justices were Eliahu Matza and Dalia Dorner.

103. *Ibid.*, par. 10 of President Barak's decision.

104. *Ibid.*, par. 5 of Justice Dorner's decision.

105. Add. Hear. Crim. 7048/97, *John Does v. Minister of Defense*.

Ilan, had ordered the release of all the detainees except for Obeid and Dirani, on the grounds that there was no basis for holding them administratively.<sup>106</sup> The state appealed the decision to the Supreme Court, which ordered that their release be delayed until final judgment<sup>107</sup> In July 1999, in a rare proceeding, the attorney of the nineteen petitioned the High Court of Justice against the Supreme Court, requesting that the state's appeal be heard immediately, in order to hasten the release of the detainees. The High Court denied the petition outright.<sup>108</sup>

Simultaneous with this proceeding, another proceeding is being held regarding the release of Ghassan Dirani (nephew of Mustafa Dirani), a member of the second group. According to an opinion of a psychologist on behalf of Israel's Ministry of Health, Ghassan Dirani is mentally ill and his medical condition deteriorated while he was imprisoned in Israel. In February 1997, in the framework of the process extending his detention, President of the Tel-Aviv District Court Ilan ruled that, in light of Dirani's condition, he should be released.<sup>109</sup> The state appealed the decision. The Supreme Court accepted the appeal and ordered that Dirani remain in detention.<sup>110</sup> In June 1998, Judge Ilan again ordered Ghassan Dirani's release on the same grounds, despite the earlier decision of the Supreme Court in Dirani's case. The state again appealed, but the Supreme Court has not yet ruled on the matter.<sup>111</sup>

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106. Adm. Det. 279/90. See Dorit Gabai and Uri Heller, "Publication Allowed: District Court Orders Release of Nineteen Hizbullah Members Imprisoned in Israel," *Ma'ariv*, 1 June 1999.

107. Adm. Det. App. 4982/98, *Minister of Defense v. John Does*.

108. HCl 688/99, *John Does v. President of the Supreme Court*.

109. Adm. Det. 10/94. See Yoram Yarkoni, "Judge Orders Release from Detention of Nephew of Hizbullah Leader," *Yediot Aharonot*, 29 June 1998.

110. Adm. Det. App. 8154/97, *Minister of Defense v. Dirani*.

111. Adm. Det. App. 4758/98, *Minister of Defense v. Dirani*.

## Detention Conditions

All of the Lebanese administrative detainees in Israel, except for Obeid and Mustafa Dirani, are held in Ramle Prison, to which they were transferred from other prisons in July 1996. The location of Obeid and Dirani is kept secret.<sup>112</sup>

According to Amnesty International, at least some of the detainees were tortured during interrogations, which lasted for the first several months of their detention.<sup>113</sup> Bilal 'Abd al-Hussein Daqrub, a member of the first group, was detained in February 1986 by a joint IDF-SLA force. According to his written testimony to Amnesty International, he was interrogated by an IDF officer in the military camp near Bar'ashit Village, in South Lebanon, and was beaten by the SLA. From there, he was transferred to Camp 17, near Binat Jabil, and was interrogated for ten days by the SLA. While there, the SLA tortured him, in the presence of Israeli security personnel, by means of electric shock. He was then moved to "Sarafand," a camp in Israel,<sup>114</sup> where he was held in isolation and interrogated for three months. In these interrogations, the Israelis placed him in *shabeh* (bound in painful positions) and deprived him of sleep for prolonged periods.<sup>115</sup> According to Amnesty International, the other members of the first group underwent similar interrogations and torture.

Over the years, Israeli authorities have prevented family visits in the prison. The IDF Spokesperson explains that this was a means to pressure

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112. According to one report, they are being held in Prison Four, in Tzrifin, in an area called "the Lebanese barracks." Yossi Melman, "Alone, But Less," *Ha'aretz*, 3 August 1997.

113. Amnesty International, *Israel's Forgotten Hostages*, pp. 6-8.

114. The name "Sarafand" was mentioned by a few Lebanese detainees in their testimonies to HRW, but the location remains a mystery. One possibility, raised by HRW and some Israeli journalists but unverified, is that the site is Tzrifin, located in central Israel. See HRW, *Without Status or Protection*, p. 25; Melman, "Alone, but Less." According to attorney Tamar Peleg-Sryk, of HaMoked: Center for the Defence of the Individual, the location may be a detention facility of Military Intelligence, which moves from one IDF base to another (letter to B'Tselem of 12 January 2000).

115. For details on similar methods of interrogation used by the GSS against Palestinians, see B'Tselem, *Routine Torture - Interrogation Methods of the General Security Service* (February 1998).

Lebanese authorities to provide information about Ron Arad.<sup>116</sup> However, according to information gathered by Amnesty International, five members of the first group were apparently allowed family visits.<sup>117</sup> At the end of May 1999, the President of the Tel-Aviv District Court, Uri Goren, ruled that Lebanese detainees (except for Obeid and Dirani) should be allowed family visits in the jail. Because the Lebanese government refuses to allow its citizens to enter Israel, family visitation has not taken place. Judge Goren also ordered that the detainees be allowed to speak with their family by phone, at the state's expense, every three months, and be filmed on video and have the videotapes sent to their families.<sup>118</sup>

The conditions under which Obeid and Dirani are being held are worse than those of the other Lebanese detainees. They are held at a hidden location in total isolation.<sup>119</sup> Contrary to the others, they are not permitted to receive or send letters.<sup>120</sup> Furthermore, Obeid and Dirani are the only two detainees in Israel and the territories under Israeli control whom the ICRC is not allowed to visit. In February 1998, the two petitioned the High Court of Justice to enable the Red Cross to visit.<sup>121</sup> The High Court has not ruled on the petition. Last April, Judge Goren ordered that their prison conditions be improved and that they be allowed to watch television, listen to the radio, and read newspapers.<sup>122</sup>

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116. Amnesty International, *Israel's Forgotten Hostages*, p. 10.

117. Letter from the IDF Spokesperson to Amnesty, following the deportation of the mother of Ghassan Dirani, who had entered Israel illegally to visit her son in Ramle Prison. *Ibid.*, p. 10.

118. Adm. Det. 279/90. See Gabai and Heller, "Publication Allowed."

119. In May 1997, at the request of Human Rights Watch, attorney Avigdor Feldman was allowed to meet with Dirani for the first time, on condition that he not provide any information about the detainee, where he is held, and the conditions there. Melman, "Alone, But Less."

120. Zinab Amin, wife of Mustafa Dirani, so informed Human Rights Watch in Beirut on 14 March 1997. HRW, *Without Status or Protection*, p. 30.

121. Dorit Gabai, "Obeid and Dirani Petition the High Court of Justice," *Ma'ariv*, 5 February 1998.

122. Yoram Yarkoni, "Hizbullah Leaders Seized in Lebanon Are Allowed to Watch Television," *Yediot Aharonot*, 29 April 1999.

## Judicial Review

Denial of a person's liberty on suspicion of endangering state security, without filing any charges and without providing the individual the opportunity to defend him or herself, severely harms the individual's dignity and most basic rights, such as the right to liberty and due process. In spite of this, administrative detention is allowed, in exceptional circumstances, both by Israeli law and the Fourth Geneva Convention.<sup>123</sup>

However, the case of the Lebanese held in Israel as bargaining chips blatantly violates this framework. As noted, the reason for denying their liberty and violating their dignity as human beings is not the danger inherent in any future act they may commit, but the state's intention to use them as a negotiating tool with the enemy. That is, they are held as hostages. The case of the Lebanese "bargaining chips" is a prime example of relating to people solely as a means to attain an objective, thereby disregarding their humanity, wishes, and pain. Taking hostages for any purpose, no matter how worthy, is the method used by terrorist organizations, not by modern democracies.

International law categorically and unequivocally prohibits hostage-taking in article 3(1)(B) common to the four Geneva conventions. This prohibition is repeated in article 34 of the Fourth Geneva Convention, which deals with protection of civilians in occupied territory. Violation of article 34 constitutes a "grave breach" of the Convention (article 147). According to article 148, no party to the Convention can derogate from these obligations. The Statute of the International Criminal Court considers grave breaches of the Convention as war crimes.<sup>124</sup>

Despite this, in the "principal appeal" decision, President Barak refrained from discussing the international prohibition on taking hostages, because the "detention of the detainees lies within the shadow of a specific law [the Detentions Law] and where this law and its interpretation are found appropriate in the circumstances of the case, domestic law in any case prevails over international law in that it is a specific provision of law."<sup>125</sup>

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123. Fourth Geneva Convention, art. 78.

124. Rome Statute of the International Criminal Law Court, article 8(2)viii. The statute may be found at <http://www.un.org/law/icc/statute/romefra.htm>.

125. Adm. Det. App. 10/94, par. 215 of decision of President Barak.

As noted, the Detentions Law, which is the legal basis for holding the Lebanese, does not define danger to state security as a grounds for detaining a person without trial. Thus, the judges were compelled to interpret the law themselves. In her minority opinion, Justice Dorner relied on the protocol of Knesset debates, arguing that the legislature's intent in allowing administrative detention was to prevent a danger resulting from the detainees themselves, where that objective could not be attained by the regular criminal process.

Contrary to Justice Dorner, President Barak only relied on judicial precedent. However, the precedents upon which he relied are decisions given in the earlier appeals of the Lebanese, decided by a single justice.<sup>126</sup> He did not indicate any other precedent that supports his interpretation of the Detentions Law. Also, Barak's decision provided no other legal support for his interpretation of the Detentions Law.

Use of the Detentions Law in this case raises another question: for how long? The detainees' attorney argued that, even if the Court rules that individuals may be held in administrative detention as bargaining chips, the detention cannot last forever. He therefore requested the Court to release them. Justice Barak acknowledged the problem, but refused to set a timeframe for continuing their detention.<sup>127</sup>

Such indefinite detention is itself a severe violation of human rights. A person who is detained indefinitely, without being charged or tried, whose detention is extended every few months, lives in constant uncertainty and fear. Persons detained in this manner are deprived of the ability to plan their future, neither as free persons nor as prisoners serving their sentences. It is likely that the same fear and uncertainty increases as the decision on extending the detention order approaches.

Given the difficult mental state to which administrative detainees are subject - particularly where there is no legal limitation on the amount of time they can be deprived of liberty - even without relating to other violations of their rights, holding Lebanese civilians as "bargaining chips" for unlimited duration is cruel and inhuman treatment or punishment, a

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126. *Ibid.*, par. 9.

127. *Ibid.*, par. 17.

breach of article 16 of the Convention against Torture, to which Israel is party.<sup>128</sup>

The Supreme Court's decision raises another question: what is the evidentiary basis for the majority's holding that the appellants are likely to facilitate the release of Ron Arad? The Court relied on the State Attorney's Office's confidential response to the appeal, filed at the end of 1995 at the latest, which contains intelligence evaluations. It should be noted that the Court denied the appellants' request to cross-examine the author of the report, to review it, or interrogate the representative of the Minister of Defense.<sup>129</sup>

As noted, the decision was given in November 1997. Justice Barak held that, "release of the appellants will lead to actual harm to state security, by seriously prejudicing the negotiations for the release of POWs and MIAs."<sup>130</sup> The Court's reliance on intelligence evaluations made at least two years earlier is puzzling. Justice Dorner received a completely different impression from the confidential report. She held that no reasonable possibility exists that the negotiations for the release of POWs would be critically prejudiced if the appellants were released.<sup>131</sup> It should be noted that GSS Director Ami Ayalon recently said that he "does not believe that continuing to hold the nineteen Lebanese in administrative detention as bargaining chips contributed or will contribute to the release of POWs and MIAs."<sup>132</sup>

Legal analyst Moshe Negbi aptly expressed one of the dangers inherent in the state's decision to use hostages as a means to attain the release of Israeli POWs and MIAs:

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128. The UN Committee Against Torture accepted this argument. In its conclusions regarding Israel's implementation of the Convention against Torture, the Committee recommended that the practice of administrative detention in the Occupied Territories be changed to meet the requirements of article 16 of the Convention. Concluding Observations of the Committee Against Torture: Israel (18 May 1998) A/53/44, paragraph 241.

129. Paragraph 18 of Barak's opinion.

130. *Ibid.*, par. 16.

131. *Ibid.*, par. 4 of Justice Dorner's decision.

132. *Yediot Aharonot*, 29 July 1999. His mention of nineteen rather than twenty-one detainees apparently results from his considering Obeid and Dirani to have a different status from the other detainees.

What legal and moral basis will we have to complain and protest tomorrow if, heaven forbid, a neighboring country detains Israeli tourists or harmless Jews, "in the name of security," and announces that they will remain in prison until Israel becomes party to the Convention against Nuclear Weapons and allows international inspection of the nuclear reactor in Dimona? Could we dispute that our neighbors have a security interest in such inspection, which is not the slightest bit less than the interest on behalf of which our Supreme Court legitimized the abduction and imprisonment of Lebanese civilians in order to use them as "bargaining chips?"<sup>133</sup>

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133. "Terrorism With Official Approval," *Ma'ariv*, 13 March 1998.



Arnon Village, February 1999 (Photo: AP)

## Chapter Four: **Expulsion of Civilians and Other Human Rights Violations**

This chapter discusses the policy of expelling and forcibly transferring Lebanese civilians to areas north of the security zone. This chapter also discusses other features of IDF and SLA control of the area, which were revealed during investigation of the expulsions. Among the most conspicuous violations mentioned are restrictions on movement of residents by means of movement permits and closures; frequent use of collective punishment; pressure on residents to collaborate with the SLA; and forcible conscription of residents of the area, including minors, into the SLA.

This chapter is based primarily on comprehensive research published recently by Human Rights Watch, supplemented by information from other sources.<sup>134</sup> The research on which the chapter is based documents cases of individuals and families expelled as collective punishment for acts of, or suspicions against, their relatives. This research relies on dozens of testimonies given by victims of the expulsion in Lebanon. The cases of expulsion and other forcible removals described below occurred in towns and villages throughout the occupied area, from Tir Herpah and Shihin in the southwest, to Hamam Village and Shiv'a in the northeast, from 1985 to 1999. The last event occurred on 25 October 1999, when two Lebanese who had been released from Al-Khiam - Zaki 'Awadeh, 66, of Khiam Village, and Monif Mahmud, 35, of Qjla Village - were expelled northward by SLA forces via Tabnit Crossing.<sup>135</sup>

Because the decision-making process on expulsions is not transparent, it is almost impossible to point out precisely who orders the expulsion. It should be emphasized that no proof was found indicating that IDF

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134. Human Rights Watch, *Persona Non Grata: The Expulsion of Civilians from Israeli-Occupied Lebanon* (July 1999).

135. Along with them, two other prisoners were allowed to return to their villages in the occupied zone. Samer Wehbi, "SLA Releases Four from Khiam Prison," *Daily Star*, 26 October 1999. See also "Four Lebanese Released from Khiam Prison," *Ha'aretz*, 26 October 1999.

soldiers were directly involved in executing the expulsions. According to those giving testimonies, the "security apparatus" of the SLA executes the detentions and interrogations, pressures the residents to collaborate, and implements the expulsions.<sup>136</sup>

The expulsion policy is possible because the IDF and SLA control entry and exit of residents from the "security zone." The IDF and SLA place various restrictions on the population's movement in the occupied area, and movement is carefully monitored. SLA personnel staff five crossings along the border separating the "security zone" and other parts of Lebanon. Permits are necessary, though not always sufficient, to cross into or out of the area. Residents are often required to return from where they came, despite the permits in their possession, because of arbitrary decisions by SLA soldiers stationed at the crossings. In other cases, illiterate residents learned subsequently that they had been given a one-way permit, which did not allow them to return to their homes in the occupied area.

Former residents of South Lebanon reported to HRW about widespread arbitrary revocation of entry and exit permits, which the SLA uses to pressure residents to collaborate or provide certain information. Revocation of permits prevents residents from visiting relatives living outside the occupied area, as well as from travelling north for business, medical treatment, or other purposes.

Another restriction on freedom of movement is the partial or total closure imposed on a village. Unlike the expulsions, IDF soldiers also take part in imposing closures. For example, in February 1999, IDF and SLA forces placed fences separating Arnon Village from the villages north of the "security zone" to prevent infiltration of Hizbullah. Arnon Village lies on the border of the eastern sector of the "security zone" on land that is not

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136. According to the report of the journalist Ronen Bergman, of *Ha'aretz*, because of difficulties faced by Israeli military intelligence in collecting information in South Lebanon, in late 1989 Israel decided to increase involvement of the GSS by establishing a security apparatus unit within the SLA. The objective of the unit was to collect information on attacks against the IDF and the SLA, and it was trained by the Israeli GSS. See Ronen Bergman, "Blind Ducks," *Ha'aretz*, 14 May 1999. This article also discusses the involvement of other Israeli bodies, such as Military Intelligence and the Mossad, in collecting intelligence and training SLA intelligence forces, and also about the problems in relations between them.

controlled by the Lebanese army or any other body. As a result of the closure, vehicles have no access to the village. Simultaneously, the access road leading from Arnon Village to Nabatiyeh was blocked.<sup>137</sup>

In another case, in July 1999, SLA forces, together with the IDF, imposed a two-month closure on 'Aita a-Sha'ab village, in the western sector of the occupied zone. The closure, which followed the killing of the head of SLA's security apparatus in the village, prevented persons from entering or leaving the village and caused a shortage of food and medications, requiring the ICRC to provide basic commodities.<sup>138</sup>

The total number of Lebanese civilians expelled from the occupied zone over the years is unknown. According to the 'Arqub Citizens Committee, a Lebanese NGO, between February 1987 and January 1999, some 250 residents were expelled from the 'Arqub region, which is located in the northwest part of the occupied area and includes the villages of Shiv'a, Hamam, Khabriyeh, Suba, and Rashayeh al Fuqar. Forty-six civilians expelled from the "security zone" in 1998 reported their expulsions to the local offices of the ICRC. The Lebanese Monitoring Committee estimates that, from the beginning of 1997 to the end of July 1999, approximately one hundred families were expelled from South Lebanon.<sup>139</sup>

The expulsion creates grave economic distress for those expelled, because, in most cases, the victims are compelled to leave the area without their possessions. HRW met dozens of Lebanese civilians who owned homes before their expulsion, but were now living in small and crowded rented apartments in Beirut's suburbs and other population centers in Lebanon. They complained that their homes remain vacant, or had been taken over by SLA soldiers, who paid no rent or other payment. Some of those who were expelled left farms with livestock (mostly goats, cows, and chickens) that had been their source of income. Farmers worried about damage to

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137. For a more detailed description of Israeli human rights violations in Arnon Village, see Gideon Levi, "To Be a Resident of Arnon," *Ha'aretz*, 25 April 1999.

138. Daniel Sobelman, "Lebanon to the UN: Israel Imposes a Closure on Two Villages," *Ha'aretz*, 8 August 1999; Nicholas Blanford, "Villagers Protest Blockade of 'Aita Sha'ab by Israeli Forces," *Daily Star*, 31 July 1999.

139. This figure appears in a letter the organization sent to the UN Secretary General and the UN Human Rights Committee on 16 August 1999. See <http://www.follupcsld-ip.org.lb/expulsion.html>.

their crops resulting from neglect. Those who found employment in Beirut received low wages, and their standard of living dropped sharply. This phenomenon was particularly prevalent among farm families, who grew their own food and now live in poverty and hardship.

For example, on 7 January 1999, in a wide-scale operation, the families of five brothers, comprising twenty-six persons, were expelled from Shib'a Village. The group included the brothers' wives and sixteen children, whose ages ranged from nine months to thirteen years. The expulsion followed the detention of two of the brothers, Isma'il and Hassan Nab'ah, on 27 December 1998, following the murder of Ghassan Daher, head of SLA intelligence in Shib'a, the previous day.<sup>140</sup>

Qassem Nab'ah, 25, was expelled with his wife and two children. He described what happened:

We were at home, preparing *iftar* [the meal that breaks the sunrise to sunset fast during Ramadan]. It was about 4:30 p.m. Three civilian cars came to each house, with three men in each car, SLA and Israelis. [He said that the Israelis wore military clothes and spoke Hebrew.] They said that all of us had to come with them to Hasbaiya. They gathered us with our cars at the entrance of Shi'ba. In my car were my mother, my wife and my two children. There was one security car in front of my car, and two cars behind me.<sup>141</sup>

The families traveled to the offices of the SLA security service in Khatzbiyeh. Nab'ah added that they were forced to wait outside the office, in the cold, for an hour.

Then Alameddin al-Badawi and Fares al-Hamra [two senior SLA security officials] told my brother that they were expelling us. Ahmad asked why, and he was hit with a Kalashnikov on his back. Then four militiamen beat him in front of us for five minutes. He was bleeding from his face.

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140. The Lebanese media reasoned that the motive for the murder was not political, but related to protection money the SLA collected from dealers of smuggled goods, and to the division of the money. Nicholas Blanford, "No Israeli Siege over Shib'a," *Daily Star*, 9 January 1999.

141. The testimony was given to HRW in April 1999.

All twenty-six persons, including the few possessions they had with them, were crammed into two cars, including the trunks, and were expelled via Zomriyeh crossing point. Qassem was allowed to take his car, but four cars belonging to his brothers were seized. The five families moved to Shu'afat, outside of Beirut, where twenty-four of them were living in two rooms that a relative had made available for their temporary use.

## **Forced Conscription and Punishment for Desertion**

SLA policy in the "security zone" includes forced conscription of adults. Testimonies of former residents of South Lebanon indicate there is no standard procedure for conscription and no minimum age. Lebanese men, women, and children were expelled by the SLA after male relatives had deserted the SLA or fled the area to avoid conscription. The U.S. State Department, for example, noted that a family of twelve persons had been expelled from Ma'is al-Jabel Village on 21 September 1996 because a relative was suspected of desertion. It did not provide details of the case.<sup>142</sup>

A woman from Markaba, in the occupied area, whose son was forced to join the SLA, stated that forced conscription of children is extremely common. She added that, "They take them at fourteen, fifteen and sixteen years old. They took my neighbor's son at fourteen."<sup>143</sup> One of her nephews said that he had been forced into SLA service in 1998, when he was seventeen years old, and remained in the militia for four months and then was released for medical reasons. He fled the village and is afraid to return.

A soldier who had served in the Liaison Unit for Lebanon from 1991 to 1994 met youths who told him that they had been pressed into service. In his testimony to B'Tselem, he stated:

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142. U.S. State Department, *Lebanon Country Report on Human Rights Practices* (30 January 1997).

143. The testimony was given to HRW in Beirut in April 1999. Her name is on file at the organization.

I was part of the training staff in a course for SLA observation post personnel, which was held at Elyakim Base, part of the Northern Command.... The participants were aged sixteen to seventeen. They were very poorly motivated. A few of them told me explicitly that they had been forcibly conscripted. The pressure generally takes the form of hints and threats of detention. I was later informed that one of the trainees deserted to the Hizbullah a few months after the course ended.<sup>144</sup>

A former resident of the occupied area, who deserted from the SLA in 1995, stated:

They take them even at twelve years old if they are tall and strong. It depends on the village. If you collaborate with them, they don't take you. The young men left in the villages are either collaborators or militia.<sup>145</sup>

According to the same person, militiamen have visited villages with lists of names, looking for intended conscripts at their homes. Other residents told HRW that sometimes the SLA security chief in a village personally instructed fathers that their sons should "volunteer." If families were not responsive, the sons were forcibly conscripted.

A twenty-one-year-old man from a small village in the eastern sector of the occupied zone described how he was forcibly pressed into the SLA in 1995, when he was seventeen years old.<sup>146</sup> During the two years before he was seized, he would hide when militiamen came to the village looking for new conscripts. In 1995, when he was in his last year of technical school studying to be an electrician, ten militiamen in uniform arrived in a truck and jeep and surrounded the family's home, their weapons drawn. "They stormed the house and took me," he said, "They told me that I had a problem and was wanted." He said that his parents and his school principal unsuccessfully pleaded with local SLA security authorities to let him finish school. He was taken first to the security office in the village,

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144. The testimony was given to Yehezkel Lein at B'Tselem's offices. The name of the soldier is on file at B'Tselem.

145. The testimony was given to HRW. His details are on file at the organization.

146. The testimony was given to HRW in Beirut in April 1999. His name and the name of his village are on file at the organization.

where he was beaten and tortured because he had eluded military service for several years. Then he was moved to the SLA's Megidiyya military training camp for twenty days, where he was placed under constant surveillance. After training, he served for two months in Beit Yahun and Bar'ashit until he managed to escape and flee the zone. As a precaution, the family arranged the departure of his fifteen-year-old brother from the village before he fled.

A woman from Markaba described how a militiaman came to the house and asked for her sixteen-year-old son, who worked as a tractor driver, telling her: "We are taking him for a while, and then we will give him back."<sup>147</sup> When her son did not return home, she visited the SLA security office in Markaba to ask about him, but was only told that he would not be coming back. "We went there for twenty days to get information. After this, they told us that they had taken him to the militia." Her son served in the militia for seven years, returning home to visit twice a week.

Her son deserted the SLA at the beginning of 1997 and fled the zone. His father was then summoned three times to the SLA security office in Markaba. He was questioned and warned that if his son did not return, the family would be expelled. Fifteen days after the son's desertion, "they came to us in the afternoon and said that we had to leave in the morning," the mother said.

She was expelled the next day with her husband, a fourteen-year-old son, and a daughter in her twenties. An eighteen-year-old daughter and twelve-year-old son were not allowed to leave with the rest of the family. "They made them stay for seven months, just to harass us," she said. The family was not permitted to take any possessions with them, and left behind a car and six cows, and land they had planted in tobacco, a source of their annual income. At the time of the interview with HRW, the family was living in difficult economic circumstances in Beirut.

In the first few months of 1999, there was a series of defections from the SLA. In response, the SLA expelled civilians from the occupied zone.<sup>148</sup>

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147. The testimony was given to HRW in Beirut in April 1999. Details about the woman are on file at the organization

148. See, for example, Amos Harel. "Six More Soldiers Desert the SLA." *Ha'aretz*, 9 April 1999.

For example, in February, the head of SLA intelligence in Shi'ba, Muhammad Nab'ah, deserted the SLA and fled the zone on foot with his wife and son.<sup>149</sup> On 6 April, six relatives of Nab'ah were expelled from Shi'ba.

In another incident, which began on 4 April, four SLA militiamen from Shi'ba fled the zone and turned themselves over to the Lebanese army. Two days later, the SLA expelled eighteen Shi'ba residents, most of them women, children, and the elderly. Some of them were relatives of the four deserters. According to the *Daily Star*: "They were summoned to the SLA's Hasbaya security headquarters in the eastern sector of the occupation zone for questioning and then driven to the Zimraya crossing, from where they continued on foot to the Lebanese army checkpoint."<sup>150</sup> On 12 April, three children of one of the deserters were expelled, bringing the total number of persons expelled from the village between 6 April and 12 April in this action to twenty-one.

## **Punishment for Refusing to Collaborate**

The SLA, under the guidance and supervision of the GSS, pressures residents of the "security zone" to collaborate with the SLA. Those who refuse are subject to threats, detention, and expulsion. In a few cases, GSS agents have been directly involved in pressuring civilians. The current head of the security apparatus, Col. 'Akal Hashem, claimed in an interview with *Ha'aretz* that Israel's withdrawal plans diminish the effectiveness of pressure on residents to collaborate:

Clearly, if your press always talks about withdrawal, it will have a negative effect on our soldiers and our ability to recruit agents. People whom *I pressure to collaborate* laugh me in the face. They say to me, "What do I get from you, the Israelis will be gone in any event in another year" (our emphasis).<sup>151</sup>

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149. See Zvi Bar-el, "The SLA's Defense Army," *Ha'aretz*, 20 May 1999.

150. "Lahad Condemns Israeli 'Barbarism,'" 7 April 1999.

151. Bergman, "OK. Abandon Us," *Ha'aretz*, 20 October 1999.

Taleb Ahmad Sa'ad, a twenty-seven-year-old construction worker from the town of Khiam, was expelled in August 1998. In his testimony, he stated that he had been approached three times to work as an informer for the SLA.<sup>152</sup> The head of security in the village "wanted me to work with them in Beirut, but I refused," Sa'ad said. In July 1998, he was brought to Al-Khiam Prison and detained for forty-two days, twenty-five of which he was interrogated, each time with his hands cuffed in front, a sack placed over his head, and a blindfold over the sack. Many of the questions focused on his brother, Sa'ad Ahmad Sa'ad, who had been expelled from the village in February 1998 on suspicion of involvement with Hizbullah. He was repeatedly beaten, insulted in vulgar language, and threatened that his father, mother, and sisters would be taken to the prison.

Sa'ad was released from prison on 17 August 1998 at 4:00 P.M. He was moved from the prison to the SLA security office in Khiam and held there overnight. The next morning, two SLA officers expelled him, saying that the decision for his expulsion had come from Israel. At the time of his interview, Sa'ad had not been able to find employment in Beirut. His parents, three sisters, and older brother were still living in Khiam.

In some cases, the sustained pressure applied on residents forced them to flee their villages. One example is that of a former resident of Kfar Qila, who recounted the pressure on him, which he said began in 1990, to work as an informer for the SLA. In his testimony, he said that he traveled several times a week to sell farm products and buy supplies for a family store in the village. He said that he was approached by SLA security operative Hassan Musa, who promised payment if he agreed to provide information:

He said that no one would be suspicious of me because I was always going back and forth to Beirut. I was evasive. He summoned me to the security office because I would not give him a direct answer. I was still evasive. He said that he had to take me to Metulla [a town inside Israel, close to the Lebanese border] to see an Israeli officer, who said that he wanted me to focus on a cousin who had relations with Hizbullah. He wanted me to

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152. The testimony was given to HRW in Beirut in April 1999.

convince my cousin to work for the SLA and inform on Hizbullah.<sup>153</sup>

Terrified that the SLA or Israelis would seek revenge, the man left Kfar Qila in June 1991, and never returned. His wife, who was pregnant at the time, stayed in the village and joined him in Beirut three months later:

My parents still do not know why I did not come back. For the first eighteen months in Beirut, it was very difficult and I stayed with relatives. My mother came to visit and said that she wanted me back. I finally explained to her that there were security problems.

## Other Forcible Transfers

In certain cases, the expulsion was carried out by prohibiting the return of residents of the "security zone" who had been outside the zone. For these families, the precise method is irrelevant, since the result is the same as that suffered by other expelled persons.

The example of the Musa family from the village of Shi'ba is a case in point. Ghassan Musa was expelled in May 1998 at the Zumrayya crossing immediately following his release from Al-Khiam Prison, where he had been held without charge for twelve years. One week later, his father, his sister, and his sister's infant daughter were also expelled through the same crossing point, and informed at that time that no other family members could return to Shi'ba. Ghassan's mother, Shihira Atweh, was in Beirut on the day of the expulsions, so she was not forcibly taken to the border of the occupied zone or compelled to leave. Because SLA personnel who expelled the rest of her family indicated that she would not be allowed to return to the "security zone," she, too, is considered to have been expelled.

According to information collected by HRW in researching its report, entire families have been prohibited from leaving their villages, sometimes for years, as punishment for the known or suspected actions of their

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153. The interview was given to HRW in Beirut in March 1999. His name is on file at the organization.

relatives. In several cases, these actions have left women and men suffering from serious medical problems without access to specialized care or severed families. In this context, some residents of the occupied zone decided to accept offers of exit permits from the SLA, enabling them to leave their villages but never to return.

A widow with seven children, who earned her living growing tobacco, described the events that preceded her expulsion from the village of Shahin, in the western sector of the occupied zone, in August 1997.<sup>154</sup> "They said that I could not enter the village any more because my son was in Hizbullah," the woman testified to HRW in Bezuriyeh, Lebanon, in March 1999. She explained that her son, who had lived outside the occupied zone since he was in his early teens, was a member of Hizbullah but did not serve in its military wing. He was killed in an accident on 7 July 1997, and his funeral was held in Bezuriyeh, a town east of Tyre, which is outside the "security zone." The widow said that she went to the funeral and stayed in Bezuriyeh for the traditional forty-day mourning period, and then traveled back to the occupied zone. She was turned away at the SLA crossing point for her village, where militiamen informed her that she had been expelled.

As a result, the widow lost her house and the income from ten dunams planted with olive trees, tobacco, and vegetables. She said that she had a license from the Lebanese government to grow tobacco, but the SLA told her agent that she was forbidden to plant tobacco on her land. Also, she was not permitted to retrieve any possessions from her home.

None of my relatives are allowed to enter the house. They [SLA] warned them not to remove anything, and my father was not allowed to send me the furniture.

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154. The testimony was given to HRW in Bezuriyeh, Lebanon, in March 1999. Her particulars are on file at the organization.

## **Violations of International Humanitarian and Human Rights Law**

The expulsion policy described in this chapter breaches article 49 of the Fourth Geneva Convention, which provides:

Individual or mass forcible transfers, as well as deportation of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Deportations and forcible transfers are categorized, in article 147 of the Convention, as "grave breaches" of the Convention, for which signatory parties undertake to punish those responsible.

The Fourth Geneva Convention stipulates, in article 35, the right of civilians in occupied territory to leave the occupied territory if their leaving is not contrary to the national interests of the state, and the right to be furnished reasons for refusal in the framework of due process:

All protected persons who may desire to leave the territory at the outset of, or during, a conflict, shall be entitled to do so, unless their departure is contrary to the national interests of the State. The applications of such persons to leave shall be decided in accordance with regularly established procedures and the decision shall be taken as rapidly as possible... If any such person is refused permission to leave the territory, he shall be entitled to have such refusal reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Party for that purpose.

Individuals and families have been expelled from the occupied zone for the known or suspected actions of others. Others have been denied permission to leave or enter the occupied zone in retaliation for the actions of family members. This policy contravenes article 33 of the Convention, which states on this point:

No protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited... Reprisals against protected persons and their property are prohibited.

Intimidation and coercion of residents of the occupied zone, particularly for the purpose of collecting information for the security apparatus of the SLA or Israel is a violation of article 31 of the Convention:

No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.

The SLA's policy of conscription of male residents of the "security zone" violates one of the requirements of article 51 of the Convention:

The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted.

Article 38 of the Convention on the Rights of the Child, to which Israel is party, prohibits the conscription of children under fifteen years old, and their taking part in hostilities. Furthermore, B'Tselem agrees with the world's leading human rights organizations, such as Amnesty International and HRW, that the minimum age for conscription should be eighteen.

As noted in Chapter Two of this report, the fact that most of the violations of international law mentioned here were executed by the SLA - even without express directives from Israel - does not diminish Israel's responsibility whatsoever.

## Chapter Five: **Bombing and Shelling of Civilians**

Since the beginning of Israel's involvement in warfare in South Lebanon, in the 1970s, hundreds of Lebanese civilians have been killed and thousands wounded by IDF and SLA land, sea, and air bombings and shelling. Also, a few Israeli civilians in towns in the Galilee have been killed and dozens wounded by Katyusha missiles fired by Hizbullah and other Lebanese and Palestinian organizations. The two sides have completely and continuously ignored the laws of war, which stipulate what is allowed and prohibited in armed conflict. Both sides have, at various stages of the fighting, attacked civilians directly and intentionally, and fired indiscriminately at population centers. In other cases, civilians have been killed and wounded as a result of firing at legitimate military targets, but in contravention of the rules of the laws of war. Israel, because of its military and technological superiority in South Lebanon, caused most of the loss of life and damage to civilian property and infrastructure.

This chapter discusses attacks on civilians and civilian targets by both sides. We shall start with international humanitarian law norms (the laws of war), in light of which the actions of the warring parties in South Lebanon will be examined. The chapter will then discuss the harm to civilians since 1993. The discussion will focus on the two major events of the 1990s: Operation Accountability, of 1993, and Operation Grapes of Wrath, of 1996. The principal research sources regarding the two operations are reports by Amnesty International and HRW.<sup>155</sup> The chapter will then discuss events that occurred during the last three years, relying on Israeli and Lebanese press reporting, the periodic reports of UNIFIL, the conclusions of the Monitoring Group of the Grapes of Wrath Understandings, and statements of the IDF Spokesperson. The chapter will close with an examination of the legality of certain weapons that have been employed during the conflict.

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155. Human Rights Watch, *Civilian Pawns - Laws of War Violations and the Use of Weapons on the Israel-Lebanon Border* (New York, 1996); Human Rights Watch, *Operation Grapes of Wrath - The Civilian Victims* (September 1997); Amnesty International, *Unlawful Killings During Operation "Grapes of Wrath"* (July 1996).

## The Laws of War

Killing of civilians in wartime is not necessarily a violation of international law. There are, however, rules that limit the conduct of the belligerents, which are designed to protect, as much as possible, civilian lives. These rules prohibit the use of some means of combat, as stated in article 22 of the Hague Regulations of 1907: "The right of belligerents to adopt means of injuring the enemy is not unlimited."

The most complete statement of these rules is found in Additional Protocol 1 to the Geneva Conventions, which was adopted in 1977. Israel has yet to sign this protocol, and the Hizbullah, even if it were interested, is not able to be party to international conventions, because it is not a state. Despite this, certain of its provisions, which will be discussed below, are considered customary international law, and therefore binding on all states and organizations, even those not party to the protocol. These provisions reflect accepted universal principles, such as the obligation to distinguish between combatants and civilians, and the principle of proportionality.<sup>156</sup>

Furthermore, IDF officials have often declared their commitment to these principles.<sup>157</sup> This commitment also appears in the IDF's Code of Ethics, which states, in section 23 of the Fundamental Principles chapter, that:

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156. For discussion on the sources that grant a customary nature to these principles, as they appear in Protocol 1, see: Theodor Meron, *Human Rights and Humanitarian Norms as Customary Law* (Oxford: Clarendon Press, 1989), pp. 62-71; Eduard Kawakwa, *The International Law of Armed Conflict: Personal and Material Fields of Application* (London: Martinus Nijhoff, 1992), pp. 29-42; M. Matheson, "The United States Position on the Relation of Customary International Law to the 1977 Protocols Additional to the 1949 Geneva Conventions," 2 *American University Journal of International Law and Policy* (1987) 419. Prof. Yoram Dinstein, "Comments on Protocol I", 320 *International Review of the Red Cross* (September 1997) 515. IIRVV, *Civilian Pawns*, p.1.

157. For example, Lt. Col. Daniel Reisner, of the international law department of the Office of the Military Advocate General, stated in a letter of 11 October 1999 to B'Tselem, that the IDF attacks enemy targets "subject to the condition of proportionality, which requires that the measure of harm to civilians or their property does not exceed the military benefit to be attained by the harm."

A person serving in the IDF shall act, when in conflict with the enemy, in accordance with the language and spirit of the laws of war, and strictly obey the principle of purity of arms and ethics of combat.

It should be clarified that this report will not address the important question of whether Israeli operations in Lebanon comply with international law. Rather, the report will focus on violations of the laws of war by the two parties, regardless of the circumstances that led to combat or the justification that each party raises for its involvement in the conflict.

The relevant fundamental principles for protecting civilians in the conflict between the IDF and SLA, on the one side, and the armed groups in Lebanon, on the other side, are stated below.

#### **A. Prohibition on Attacks Against Civilians**

Article 48 of Protocol 1 states the basic rule relating to protection of civilian lives:

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

Article 51(2) of Protocol 1 strengthens this obligation, and prohibits any attack whose purpose is to spread terror among civilians. This article establishes the distinction between bombing a military target, which may spread terror among civilians, but is legitimate, and bombing whose main objective is to terrify civilians, which is prohibited.

#### **B. Prohibition on Indiscriminate Attacks**

Article 51(4) of the Protocol defines indiscriminate attacks as attacks that "are not directed at a specific military objective," or, because of the weapons or methods of combat used, cannot be so directed. Also, pursuant to article 51(5)(b), an attack is considered indiscriminate if, although directed against a military objective, the incidental loss to

civilians would be excessive in relation to the anticipated military advantage. This rule is referred to as the "principle of proportionality."<sup>158</sup>

### **C. Prohibition on Reprisal Attacks on Civilian Populations**

This prohibition appears in article 51(6) of the Protocol, and is designed to prevent such vicious cycles as that between Israel and the Hizbullah, where the parties believe that an attack on civilians of the opposing party is the only way to protect their own civilians. The clause states, "Attacks against the civilian population or civilians by way of reprisals are prohibited." In other words, killing of civilians on one side cannot justify killing civilians on the other.

### **D. Prohibition on Using the Civilian Population as a Shield**

Article 51(7) of Protocol 1 prohibits using civilians as a shield or as a means to attain immunity from enemy attacks. Similarly, article 58(b) obligates the combatant parties to avoid locating military objectives within or near densely populated areas.

The protocol makes clear that, where one side violates this rule, the other party is not allowed to kill that party's civilians. Article 50(3) states that the presence of non-civilians within the civilian population "does not deprive the population of its civilian character." Article 51(8) makes clear that even if one side is shielding itself behind civilians, that violation does not release the other side from its obligations concerning civilians.

### **E. Prohibition on Attacks Against Civilian Targets**

Article 23(g) of the Hague Regulations of 1907 stipulate that it is prohibited to destroy the enemy's property, unless the destruction is "imperatively demanded by the necessities of war." Article 54 of Protocol 1 provides that it is prohibited to attack or destroy objects indispensable to the survival of the civilian population, when such an attack is not required by imperative military necessity.

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158. A UN commission of jurists explicitly held that this rule lies within customary international law. The UN adopted the commission's conclusions. International Law Commission, *Third Report on State Responsibility*, Chapter IV, pp. 32-35 (ACN.4/4/440, 10 January 1991).

## Operation Accountability - 1993

### Israel's Strategy

"Accountability" was the name given to Israel's seven-day military operation in July 1993, which marked a significant escalation of hostilities in South Lebanon.<sup>159</sup> According to Lebanese sources, 118 Lebanese civilians were killed and close to 500 injured by IDF and SLA bombing. According to the IDF Spokesperson at that time, two Israeli civilians were killed and twenty-four injured. One of the conspicuous features of the operation was the direct and deliberate attacks on Lebanese and Israeli civilians for strategic purposes.

Israel's objective was to force South Lebanese residents in areas outside the "security zone" to flee in the direction of Beirut, thus putting pressure on the central government to rein in Hizbullah, and to punish residents of the south for enabling Hizbullah to operate in their midst.

Israel's prime minister, Yitzhak Rabin, stated this clearly: "We want to cause a wave of flight and damage to everyone involved in Hizbullah activity."<sup>160</sup>

Under the laws of war, Israel is responsible for civilian lives in the combat zone, and removal of them from the zone is likely, in certain circumstances, to be a legitimate measure toward protecting their security. However, as Israeli leaders publicly stated, the civilians' security was not the motivating factor behind the removal. Rather, the objectives were political and strategic: to punish the population and pressure the Lebanese government. In light of these reasons, the expulsion of tens of thousands of residents from their homes is improper and unlawful.

The operation was executed in three stages:

*The First Stage* This stage continued throughout the first day of the operation. Residents of certain villages were warned, by the SLA's "Voice

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159. This part of the chapter is based, unless otherwise noted, on Human Rights Watch, *Civilian Pawns*.

160. Rabin made this statement in his report to the Knesset's Foreign Affairs and Defense Committee on 27 July 1993. Gidon Alon, "Rabin At the Foreign Affairs and Defense Committee." *Ha'aretz*, 28 July 1993.

of the South" radio, that they must leave their homes so as not to be injured. IDF air attacks were directed at houses of suspected Hizbullah leaders.

*The Second Stage* These villages were intensively shelled, causing many deaths. Residents fled in large numbers toward the coast. According to testimonies of residents, Israeli aircraft flew at low altitudes over areas that had been attacked, in a westward direction, apparently to frighten residents and cause them to flee.

*The Third Stage* Tyre and Sidon and areas near refugee sites were shelled to cause the residents to continue northward in the direction of Beirut via the coastal road. This stage began on the third day of the operation, when Israel fired ten missiles at the Sidon vegetable market, killing at least two persons and injuring six. The same day, Israel shelled the adjacent Palestinian refugee camp of Ein al-Hilweh, injuring five persons. Many residents from throughout the area fled to the coastal road, but relatively few reached Beirut. In response to a question of HRW, the head of the IDF's international law department of the Office of the Military Advocate General claimed that the IDF refrained from attacking sites where large numbers of persons were present.<sup>161</sup> A total of 150,000-200,000 persons fled their homes as a result of the shelling.

HRW's research, like those of Lebanese welfare authorities and organizations, indicates that most of the persons killed and injured during Operation Accountability were civilians and not combatants belonging to Hizbullah or Palestinian organizations.<sup>162</sup> Although IDF commanders regularly contended that the prohibition on firing at civilians and indiscriminate firing was strictly safeguarded throughout the operation, the number of civilians killed and injured by IDF and SLA attacks refutes this contention.

Israel claims that the injury to civilians and property resulted from the Hizbullah using houses located in the midst of villages as bases for their military operations. As explained above, such use violates the laws of war.

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161. Lt. Col. Ahaz Ben-Ari, head of the international law department in the Office of the Military Advocate General, made this statement on 18 April 1994.

162. HRW, *Civilian Pawns*, pp. 83-84.

However, even if Hizbullah operated at all times in the midst of the civilian population, it was Israel's duty to ensure the lowest possible number of civilian casualties when attacking military objectives. According to testimonies gathered by HRW, the IDF attacked villages from which Katyusha missiles were launched without identifying or setting specific military objectives within the villages, without taking into account injury of civilians, apparently using the attacks as punishment for Hizbullah activity there.

The announcements broadcast on "The Voice of the South" radio, at least during the first stage of the operation, were ambiguous as to the attack targets. They warned about attacks on "terrorist bases in the area" and not about massive shelling of villages.<sup>163</sup> In any event, Israel should have presumed that at least some of the residents, primarily the elderly, sick, and helpless, would not leave, particularly given the short time between the notices and the attacks. Thus, the massive attack on civilians was a blatant violation of the prohibition on indiscriminate firing. Broadcasts on "The Voice of the South" cannot provide a basis for assuming that the villages were free of civilians, as expressed by Brig. Gen. Amir Dror, of the IDF intelligence division, commenting that, "The more that the civilian population leaves, the higher the percentage of persons in the area who are Hizbullah, and also a small number of terrorists from Palestinian organizations."<sup>164</sup>

### **Hizbullah Attacks**

During the week of Operation Accountability, the Hizbullah fired 273 Katyusha rockets, of which 151 fell in the north of Israel and 122 in South Lebanon. As noted, this shelling killed two Israeli civilians and wounded twenty-four. The declared objective of Hizbullah was to stop the Israeli shelling, by causing as many deaths and injuries as possible.

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163. Article 57(2)(c) of Protocol 1 obligates the attacking side to give effective advance warning of attacks which may affect the civilian population, except where circumstances do not permit such warning. Also, in the event that it is reasonable to believe that the civilians did not hear or understand the warning, the side attacking is not released from its obligations to refrain from indiscriminate firing.

164. *Ha'aretz*, 27 July 1993.

Despite the objective, the rocket-fire caused a small number of dead and wounded, and relatively little property damage, because only a few rockets landed in towns and villages. However, these attacks caused significant economic damage to residents of the Galilee: loss of workdays, closing of shops, and flight of residents south. Despite the limited loss of life and property, the Hizbullah attacks succeeded in terrifying Israeli civilians living in the north and forced them to live in shelters for long periods.

In these attacks, the Hizbullah violated the same prohibitions of the laws of war that Israel violated: failure to distinguish between civilians and combatants, indiscriminate firing, failure to meet the duty of proportionality, and reprisal attacks against civilians.

### **Cease-fire and the “Understandings”**

On 31 July 1993, Israel and the Hizbullah reached a cease-fire and agreement to an informal, unwritten set of norms, which Israel calls the Accountability Understandings. These rules have been the basis for combat since that time. The primary principle of the understandings is the prohibition on attacks against civilians. However, the arrangement can be understood to indicate that an attack on civilians would be a legitimate response to an attack on civilians - intentional or not - by the other side. Thus, while the declared purpose of the arrangement was to protect civilian lives, it in fact turned civilians, on both sides of the border, into hostages of the other side.

From the time of the cease-fire to the commencement of Operation Grapes of Wrath, the IDF and SLA killed at least thirty-three Lebanese civilians, and Hizbullah rocket attacks killed two Israelis, all under the auspices of the understandings. During this period, both sides suffered dozens of wounded civilians and extensive damage to property and infrastructure.

## Operation Grapes of Wrath - 1996

In early 1996, another escalation occurred in the conflict between the IDF and SLA and the Hizbullah in South Lebanon and the north of Israel.<sup>165</sup> This escalation led to Israel taking military action given the code-name Operation Grapes of Wrath, which started on 11 April 1996 and lasted seventeen days.

The strategy lying behind this operation was, in large part, the same as that of Operation Accountability. As the political echelon explained and as was apparent from the military action, Israel sought to pressure the Lebanese government to terminate Hizbullah activity and impose its authority on Hizbullah.<sup>166</sup> The same means were also used: forcing residents from the south to flee in the direction of Beirut. As in Operation Accountability, SLA radio urged the residents of towns and villages chosen for shelling to leave their homes within a few hours. Many civilians, generally the most helpless, were unable or did not want to leave. Some were killed or injured by IDF or SLA shelling which was based, as in Operation Accountability, on the assumption that those who remained behind were "Hizbullah terrorists."

Militarily, the IDF expanded its shelling, and for the first time since 1982, attacked targets within Beirut. Israel also imposed a sea embargo on the ports of Tyre, Sidon, and Beirut. As a result of SLA threats and IDF shelling, some 300,000 Lebanese civilians abandoned their homes. Some thirty thousand Israeli civilians living in the Galilee fled their homes. According to Lebanese sources, during the operation, 154 Lebanese civilians were killed and some 350 wounded. According to the IDF Spokesperson, sixty-two Israeli civilians were wounded during the period of the operation; no Israeli civilian was killed by Hizbullah attacks.

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165. This part of the chapter is based, unless noted otherwise, on the following reports: Amnesty International, *Unlawful Killings*, and Human Rights Watch, *Operation Grapes of Wrath*.

166. For example, Israel's Foreign Minister, Ehud Barak, told the U.S. Ambassador, Martin Indyk, that "The political objective of the action is the government of Lebanon... Lebanon must exercise its sovereignty and disarm the Hizbullah, as it did with other militias." Eitan Rabin, "Major General Levine: IDF Action in Lebanon will Continue Seven to Ten Days," *Ha'aretz*, 2 April 1996.

Some of the IDF attacks during the operation were documented and reported because of the large number of civilians killed, or because children were killed. They appear to be violations of the laws of war. Three examples follow.

#### **Attack on an Ambulance Carrying Civilians - 13 April 1996**

On 13 April 1996, at about 1:30 P.M., an IDF helicopter fired rockets at a vehicle carrying thirteen civilians fleeing the village of al-Mansuri, killing two women and four young girls. The vehicle was a Volvo station wagon with a blue flood light, a red crescent painted on the hood and the word "ambulance" written in Arabic. Reporters at the scene filmed the incident.<sup>167</sup> The film footage shows, and testimony of UN soldiers who arrived immediately after the car was hit corroborate, that there were no weapons or any other type of military equipment in the car, only some food and clothes. Amnesty's investigation revealed that none of the passengers were connected to Hizbullah.

Article 21 of the Fourth Geneva Convention provides immunity against attacks of any kind against vehicles carrying wounded civilians or sick persons and which are properly marked. The IDF never claimed that the attack was a mistake. The head of IDF intelligence, Major General Moshe Ya'alon explained that, "The terrorists use ambulances to flee from the area."<sup>168</sup> Then commanding officer of Israel's Northern Command, Major General Amiram Levine, told reporters: "If children were killed, I regret that, but I repeat and stress that they were in an area from which the Hizbullah fires Katyushas."<sup>169</sup> The IDF never provided any proof supporting the claim that this ambulance or other ambulances had been used by Hizbullah. On the contrary, because there was much evidence that ambulances had been used for humanitarian purposes (removal of civilians from the zone following IDF and SLA directives), firing at the ambulance was a blatant violation of the laws of war.

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167. The incident was filmed by cameramen of al-Manar Lebanese television. The photos may be seen on the Internet at <http://almashriq.hiof.no/lebanon/300/350/355/april-war/islamic-resistance/ambulance.html>.

168. *Ha'aretz*, 15 April 1996.

169. Eitan Rabin, "The Chief of Staff: Hizbullah Member Drove the Vehicle," *Ha'aretz*, 14 April 1996.

### **Attack on the Village of Nabatiyeh al-Faqwah - 18 April 1996**

Eleven persons were killed and ten injured in an IDF air attack on a house in Nabatiyya al-Faqwah, some three kilometers north of Nabatiyeh, in South Lebanon. Eight of those killed were from one family: a mother and her seven children, including a four-day-old baby. Around 6:30 A.M., Hizbullah fired mortars from a nearby hill at an IDF position. A few minutes later, IDF helicopters fired rockets at three buildings in the village, demolishing one totally and severely damaging the other two. Lebanese families were living in the buildings. The IDF Spokesperson claimed that the helicopters fired at the building in which the eleven were killed because Hizbullah was hiding there after firing the mortars. Investigations conducted by Amnesty and HRW did not confirm this contention. The IDF's statement ignored the fact that the IDF fired at two other buildings during the same attack. Here, too, the IDF acted on the assumption that the only persons remaining in the village after warning had been given to leave were "terrorists." Treating a civilian structure as a legitimate military target because its residents had been warned to leave violates the laws of war.

### **Attack on the UN Compound at Qana - 18 April 1996**

On 18 April 1996, IDF artillery attacked the UNIFIL compound manned by a contingent from Fiji. At the time, there were over 800 Lebanese civilians who had fled from their villages on IDF orders. As a result of the shelling, 102 refugees were killed and hundreds wounded. The IDF Chief of Staff, Amnon Lipkin-Shahak, claimed that the decision to shell the compound was not an error of judgment, since the Hizbullah had fired Katyushas from close by, and the IDF did not know that civilians were located there:

At 1:55 P.M., there was firing at IDF forces... It came from near Qana, some 350 meters from the UN compound. At first, a few shells were fired, and then Katyushas. We returned fire... This was not the first time that terrorists fired from the proximity of civilians... We did not know that there were civilians in the compound.<sup>170</sup>

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170. Eitan Rabin, "Shahak: IDF Did Not Know," *Ha'aretz*. 19 April 1996.

A few days later, the head of IDF intelligence, Major General Moshe Ya'alon, contradicted the Chief of Staff's contention that the IDF did not know civilians were there:

The one who did not know that there were so many civilians at Qana, and contended that he did not know, is the same commander who decided to fire - and he in fact did not know. We knew from the second day of the operation that civilians were removed from their villages into UN facilities. Military Intelligence in the Northern Command added information on what is happening on the other side... The relevant question is whether it was correct to open fire under these circumstances.<sup>171</sup>

Military experts who investigated the incident, including the military advisor of UN Secretary General Boutros Boutros-Ghali, and military analysts on behalf of Amnesty and HRW, confirm that Hizbullah had fired mortars from less than 300 meters from the UN compound and endangered IDF forces who had been operating north of the occupied zone.<sup>172</sup> The site from which the Hizbullah fired was what is called in the laws of war a legitimate target. Also, Hizbullah blatantly violated, apparently intentionally, the prohibition on using a civilian population as a shield against attacks by the other side.

However, these facts do not, according to the laws of war, release the IDF from its obligation to distinguish at all times between combatants and civilians, and to ensure proportionality between the military benefit obtained from an attack and the damage liable to be caused to civilians. As noted, Hizbullah's use of civilians as a shield does not nullify the protection to which civilians are entitled. Furthermore, article 57 of Protocol 1 of the Geneva Conventions provides several precautionary measures to be taken before commencing shelling. If the IDF had taken at least some of those measures in this case, it is likely that the tragedy would not have occurred. The IDF's chief artillery officer, Brigadier General Dan Harel, who was appointed to investigate the incident, concluded that the

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171. Eitan Rabin, "Israeli Intelligence and Northern Command Blame Each Other," *Ha'aretz*, 26 April 1996.

172. The military advisor of UN Secretary General Boutros-Ghali was Major General van Kappen. See UN General Assembly document S/1996/337.

firing at Qana resulted from "defects in tactical devices at the forward control center of the Northern Command." According to Harel, the mistakes in plotting led to the belief that the UN compound was further away than it actually was.<sup>173</sup> However, unlike the incident in Sabra and Shatila, in 1982, no entity outside the IDF investigated the incident, and no officer or soldier was found personally responsible for killing the civilians.

### **Hizbullah Attacks**

During Operation Grapes of Wrath, as in Operation Accountability, the Hizbullah increased its efforts to strike and terrify Israeli civilians in the north of Israel. The head of the Hizbullah, Hassan Nasrallah, adopted entirely the Israeli formula whereby civilians on the other side are a means to put political pressure on the "enemy government:"

I call upon residents of the north, if they do not want to be injured, to protest and demand the enemy government to cease its attacks against civilians in South Lebanon and the western valley. Military action will only lead to injuries, killing, and destruction in North Palestine... There is no other way.<sup>174</sup>

According to the IDF Spokesperson, during Operation Grapes of Wrath, Hizbullah fired 639 Katyushas at Israel. Though no Israelis were killed by these attacks, sixty-two were injured, three seriously. Some of the rockets struck homes, causing great damage and even completely destroying a few of them. The Katyushas also damaged infrastructure, and several towns were left without electricity for several hours. All the Hizbullah attacks on Israel were, as noted, a blatant and gross violation of the laws of war.

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173. Eitan Rabin, "IDF Investigation: Plotting Errors Caused Attacks on Kfar Qana," *Ha'aretz*, 6 June 1996.

174. The comments were made at a press conference in Beirut on 10 April 1996. *Ha'aretz*, 11 April 1996.

### **The Grapes of Wrath Understandings**

The operation ended on 26 April, following the intervention of the United States and France, which led to new "understandings" between the warring sides. Unlike Operation Accountability, the understandings were in writing and made public. The four major points of the understandings are as follows:

1. Armed groups in Lebanon will not carry out attacks by Katyusha rockets or any kind of weapon into Israel.
2. Israel and those cooperating with it will not fire any kind of weapon at civilians or civilian targets in Lebanon.
3. In addition, the two parties commit to ensuring that under no circumstances will civilians be the targets of attack, and civilian-populated areas and industrial and electricity installations will not be used as launching grounds for attacks.
4. Without violating this understanding, nothing stated in it denies any party from exercising the right of self-defense.

Pursuant to the understandings, a monitoring group was established. Composed of representatives of Israel, Lebanon, Syria, the United States, and France, its task is to oversee implementation of the understandings. The sides are obligated to submit to the group their claims of breach by the other side. The complaints are to be made within twenty-four hours of the time of the incident, so that the group can determine whether or not a breach was committed.

The understandings are a step forward in that they explicitly recognize the need to protect civilian lives. But the undertakings of the parties are nothing more than a recognition of their obligations under customary international law. Furthermore, the understandings are not clearly drafted and enable interpretation that allows other obligations applying to the parties to be ignored, such as the prohibitions on indiscriminate firing and reprisal attacks against civilians.

The fact that the group members are not independent but represent their countries - some of them directly involved in the conflict - affects the objectivity and effectiveness of this body. Efficient and proper fact-finding regarding breach of the understandings requires a professional, unbiased

body. Unfortunately, the parties decided against a body like the International Fact-Finding Commission, which has the expertise, the independence and the necessary authority to investigate violations of the laws of war.<sup>175</sup>

## **From Grapes of Wrath to the Present: The Killing of Civilians Continues**

From the end of Operation Grapes of Wrath to the present (30 November 1999), there has been almost non-stop warfare between the IDF and SLA, on the one side, and the Hizbullah and other militias, on the other side. Despite the understandings, which were intended to protect civilians and civilian targets, the two sides have continued to kill and maim innocent civilians and attack civilian targets. The attacks on civilians, most of which are blatant violations of the laws of war, are often presented as legitimate actions under article 4 of the understandings, which provides for "the right of self-defense."

Hizbullah continued to fire Katyusha rockets at the Galilee in reprisal for attacks on Lebanese civilians by the IDF and SLA. As a result of one of these attacks, two Israeli civilians in Kiryat Shmonah were killed and dozens injured. During attacks on IDF and SLA forces, Hizbullah and other militias killed at least twenty-five Lebanese civilians, and injured dozens.<sup>176</sup>

On the other side, Israel continued to attack opposing combatant groups from ground, air, and sea. Some attacks clearly contravened the laws of war and caused civilian deaths and injuries. Israel, like Hizbullah, used concealed explosive charges in selected locations, which killed several Lebanese civilians (see more on this below). Since the end of Operation Grapes of Wrath, the IDF and SLA killed at least fifty Lebanese civilians and injured approximately 220.

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175. This committee was established pursuant to article 90 of Protocol 1 of the Geneva Conventions, and is composed of fifteen independent experts (among them military personnel, jurists, and physicians). The commission sits in Bern, Switzerland.

176. The figures on persons killed are combined from two sources: periodic reports of the UNIFIL Commander and summaries of the monitoring group of the Grapes of Wrath Understandings.

At least an additional seventeen Lebanese civilians were killed in instances where it is unclear who fired the deadly shot or planted the explosive device. Thus, at least ninety-four civilians have been killed from April 1996 to the present. Most of these deaths constitute a grave breach of the laws of war. A few examples follow.

### **Shelling of Sidon - 18 August 1997**

Early in the afternoon of 18 August 1997, SLA forces fired sixteen mortars at Sidon. One struck the heart of a residential district, killing at least six civilians, one a child, and injuring forty. The firing caused much damage to homes and motor vehicles. Also, one of the mortars struck a high-tension power cable, leaving three hundred thousand persons without electricity. The attack was in reprisal for a charge that Hizbullah planted near Iezin, killing two sons of a senior SLA officer. The officer had been killed four years earlier in a military action.<sup>177</sup> The shelling of Sidon was a grave violation of the laws of war and demonstrated disregard for civilian lives. Israel's Minister of Defence at the time, Yitzhak Mordechai, and the head of the Northern Command, Amiram Levine, stated that they "objected to the SLA attack," and that it was made without Israel's knowledge.<sup>178</sup>

It should be noted that Israel is required to ensure that the SLA does not breach the laws of war. After a violation has been committed, Israel should unequivocally condemn it - and not only "object" to it - and prosecute those responsible. Israel took neither of these measures in this case.

### **Air Force Shelling of the Lebanese Bekaa - 22 December 1998**

Eight Lebanese civilians, among them a mother and her six children, were killed on 22 December 1998 by Israeli Air Force shelling near Jinta, in the Lebanese Bekaa. The woman's husband and another child were wounded.

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177. *Ha'aretz* and *Yediot Aharonot*, 19 August 1997. The family connection was apparently the principal reason for the magnitude of the SLA attack. "The two children killed by the Hizbullah charge were more than two ordinary Lebanese children. They were the children of our company commander..." *Yediot Aharonot*, 21 August 1999.

178. Amir Rapaport, "IDF Warned," *Yediot Aharonot*, 19 August 1997.

The shelling resulted from the pilot's error in identifying the target, a Hizbullah training facility, which was situated elsewhere. The IDF Spokesperson officially apologized and promised to investigate the incident. Other than an internal Air Force investigation, no investigation was made to determine whether necessary measures had been taken to prevent civilian casualties. The Military Advocate General, Brigadier General Uri Shoham, explicitly stated that it was unnecessary to conduct an external investigation or prosecute the pilot.<sup>179</sup> In reprisal, Hizbullah fired Katyusha rockets at Kiryat Shmonah, injuring fifteen civilians, one moderately and the others lightly. This reprisal attack violated both the laws of war and the Grapes of Wrath Understandings.

#### **Attack on Civilian Infrastructure - 24-25 June 1999**

In May 1999, hostilities in South Lebanon began to escalate. The principal cause of the escalation was civilian casualties on both sides and the subsequent reprisal attacks. A Hizbullah attack on the Galilee, on 24 June, killed two Israeli civilians in Kiryat Shmonah. The Israeli government decided to attack Lebanese civilian infrastructure to pressure the Lebanese government to restrain Hizbullah.<sup>180</sup> The bombing destroyed electric-power stations in Jamhur and Basalim, outside Beirut, the cellular switchboard in Iqlim al-Harub, and three bridges over the Awali River, which connects Beirut and the south of Lebanon. The shelling killed at least nine civilians and wounded more than sixty. The electric-power station that was struck is the largest in Lebanon, providing electricity to half of Beirut's population.

This shelling is defined in the laws of war as indiscriminate firing, and, as noted, international humanitarian law prohibits attacks on civilians and civilian objects. Israel did not try to argue or prove that the power stations and bridges were military objects serving Hizbullah.

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179. *Ha'aretz*, 25 December 1998.

180. The IDF also bombed infrastructure in Beirut during Operation Grapes of Wrath, but that was a relatively limited attack, which ended following pressure by the United States, England, France, and other western countries.

## Prohibited Weapons

International humanitarian law requires states to use weapons that are compatible to the target attacked. This report will now examine both sides' use of roadside explosives and Israel's use of two particularly deadly weapons employed in populated areas: phosphorous and flechette shells. The IDF Spokesperson's response regarding use of these weapons was that, "The IDF uses lawful weapons against lawful targets."<sup>181</sup>

### Roadside Explosives

As noted above, the use of explosives planted alongside roads where IDF and SLA forces pass has been the most effective weapon of Hizbullah and the other militias, killing dozens of soldiers over the years. Less known is that these Hizbullah-planted explosives, particularly when detonated by stepping on or touching them, have also killed many Lebanese civilians, some of them children, living in villages in the occupied zone. According to the periodic reports of UNIFIL, from July 1995 to July 1999, at least fifteen Lebanese civilians were killed and about ten injured by Hizbullah as a result of detonation of these explosives.<sup>182</sup>

According to one of the reports, in the first half of 1997, the IDF and SLA also began to set explosives outside the occupied zone, to prevent Hizbullah from infiltrating into the zone.<sup>183</sup> According to a report in the *Daily Star*, a Lebanese newspaper, at least seven civilians were killed and another six were injured by explosives planted by IDF and SLA forces.<sup>184</sup> According to the Hebrew inscription on the explosives seen after they were detonated, the explosives were made in Israel. On 4 August 1997, outside the "security zone," a select IDF unit killed five Hizbullah members by means of explosives that had been planted around their homes. The action received wide media coverage, and IDF officers admitted that the

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181. Letter to B'Tselem from Captain Avital Margalit, head of Assistance Department, IDF Spokesperson's Office, 30 March 1999.

182. Report to the Secretary General of the United Nations Interim Force in Lebanon, 1995-1999.

183. *Ibid.*, 1997 report, par. 4.

184. Nicholas Blanford, "Iezin Goes on Strike," *Daily Star*, 29 January 1998.

IDF uses such explosives. On 1 December 1998, the military censor permitted for the first time a news report that a thirteen-year-old Lebanese youth had been killed north of the "security zone" from an explosive charge that had been planted by IDF sea commandos during an action initiated by the IDF.<sup>185</sup>

The laws of war expressly prohibit the use of mines and other booby traps of this kind in residential areas. In 1995, Israel signed the convention dealing with this prohibition.<sup>186</sup> Furthermore, the prohibition on such explosives is obvious from the nature of the weapon, because of the obligation to discriminate between combatants and civilians.

In letters to B'Tselem, an IDF soldier, whose service included making explosives, stated:

I served in the Ordnance Corps, the development and testing unit... I got to the unit and was on a team with two other soldiers. We worked with the sabotage division. The sabotage division assembled all kinds of sabotage charges... The sabotage charges were installed in polyester structures with a stone-like appearance that we casted from molds. Being a camouflage team, we were responsible for the stone-like structures. Our task was to make those "stones" and paint them such that the sabotage charges could be planted inside.

Soldiers from IDF combat units would come to our unit, to the camouflage team, and bring us samples they had collected in the area where the charges were to be planted. Based on those samples, we mixed the colors with which we painted the polyester stone. Then they would bring us stones identical to those found in the particular area, and on these stones the casts were made... Ultimately, after the cast was removed from the mold, there was hollow stone made from polyester that we painted to match the

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185. Amos Harel, "Allowed for Publication: Lebanese Youth Killed by Explosive Planted by Sea Commando," *Ha'aretz*, 21 December 1998.

186. Protocol (II) on Prohibitions or Restrictions on the Use of Mines, Booby Traps and other Devices (1980). This protocol is part of a broader convention, the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons (1980).

samples, sometimes before the charge was planted inside and sometimes after.

I know that sabotage charges bearing a stone appearance were planted near homes and within villages where innocent civilians were living... In some operations that made news headlines incidentally, civilians were killed: women, men, and even children who played innocently with the stones...<sup>187</sup>

According to UNIFIL reports, in addition to persons killed by the explosives mentioned above, when the identity of those who planted them was known, at least fifteen other Lebanese civilians, among them seven children, were killed by explosives about which it was impossible to definitively determine who planted them.

### **Phosphorous Incendiary Devices**

Phosphorous is a kind of incendiary weapon that ignites spontaneously in air. The most common type of phosphorous is white phosphorous. The principal use of phosphorous ammunition is as a flare, using the smoke it produces, and for illumination to mark targets. This ammunition is used across the world in the form of shells, mortar bombs, and grenades. In addition to use as a flare and marker, white phosphorous is also often used as an anti-personnel weapon. The effect can be devastating, since, in addition to the toxicity of the smoke, burning fragments can stick to the skin or clothing and cause serious burns.<sup>188</sup>

The laws of war prohibit the use of phosphorous against civilians or civilian targets. Although use of the weapon against military targets is not prohibited, the laws of war limit its use where a reasonable likelihood of danger exists that civilians will be injured.<sup>189</sup>

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187. The identity of the soldier is on file at B'Tselem. The statements were made in two letters that she sent to B'Tselem in June and July 1999.

188. P.R. Courtney-Green, *Ammunition for the Land Battle* (London: Brassey's Ltd., 1991), pp. 195-196.

189. Protocol (III) on Prohibitions or Restrictions on the Use of Incendiary Weapons (1980). This protocol, which Israel has not yet signed, is part of the convention mentioned above: Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons (1980).

HRW investigated three cases where Lebanese civilians were injured by phosphorous during Operation Accountability.<sup>190</sup> Among the substantial evidence reviewed by military experts on behalf of the organization were artillery shells with head stamps indicating they contained phosphorous, testimonies of injured civilians, eye-witness testimonies, and medical reports of hospitals where the injured were treated. The experts concluded that the IDF had fired shells containing phosphorous or a similar material, which caused burns of various degrees, and the deaths of two children. The experts could not conclude if the shells had been fired with the intent to injure or as a flare or marker.

Israeli and Lebanese media also reported on the use of phosphorous by the IDF. On 27 October 1998, *Ha'aretz* reported that two Lebanese civilians, aged sixteen and twenty-six, "were wounded from Israeli phosphorous shells not far from the border of the security zone in South Lebanon." In February 1999, the monitoring group of the Grapes of Wrath Understandings received a complaint from the Lebanese government regarding an Israeli attack on Majdal Salim:

The monitoring group knows that on 6 February 1999, following attacks initiated by an armed group of Lebanese [Hizbullah or Amal] from positions far from Majdal Salim, two 120 mm mortars were fired at the village, *one of them containing phosphorous*, by Israel or those collaborating with it [the reference is to the SLA], and damaged two houses and burned four civilians severely, three of them children (our emphasis).<sup>191</sup>

An Israeli reserve-duty soldier who served in the navy during Operation Grapes of Wrath gave a testimony to B'Tselem about the use of phosphorous:

I was on the boat that shelled the coastal road in South Lebanon. The reserve duty lasted from a bit after the operation started until it ended... The navy's task was to blockade the coastal road of South Lebanon. The boat I was on faced the coast. I don't know exactly where, maybe the area of Sidon. In any case, we were close

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190. HRW, *Civilian Pawns*, pp. 118-127.

191. Notice of the chairperson of the monitoring group, following meetings of the group on 11-12 February 1999 at UNIFIL Headquarters, in Neqora.

to shore, I could see it. The policy was to prevent civilians from moving along the road, and if we saw a vehicle passing, fire in front or alongside it so that it couldn't pass.... The ammunition was arranged in a chain that contained both regular shells and phosphorous shells, in a proportion of one phosphorous shell to two regular shells, something like that. That is the normal ammunition on boats like that. The phosphorous shells are marked "explosive smoke." That is the nickname for phosphorous. Everyone there knows it.<sup>192</sup>

### **Flechette Shells**

A flechette shell is an anti-personnel weapon generally fired from tanks. The shell contains more than ten thousand 1.5-inch shell darts which, as they are released from the canister, spread out in an arc that can reach a maximum width of about ninety meters. The advantage of flechette munitions over other tank-fired anti-personnel shells is their ability to penetrate dense foliage at wounding velocity. The IDF's use of flechettes in South Lebanon has resulted in the death of dozens of Lebanese civilians. Lebanese physicians who treated persons struck by flechettes asserted that the darts have a devastating effect inside the body, because the tail end spins, making it "like a drill."<sup>193</sup>

The laws of war do not expressly prohibit or limit the use of flechettes. However, the large killing range of this ammunition, as proven in Lebanon, is liable to lead to the deaths of many civilians. For this reason, the use of flechettes, particularly in populated areas, is equivalent to indiscriminate firing, which is expressly prohibited by the laws of war.

In July 1995, two girls, aged six and eleven, from Nabatiyeh al-Fawqa were killed by a flechette fired from an IDF tank on the 'Ali Taher ridge.

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192. The name of the soldier is on file at B'Tselem. The testimony was given to Noga Kadman in Tel-Aviv on 18 March 1999.

193. HRW, *Civilian Pawns*, p. 129.

Prime Minister Yitzhak Rabin admitted that the firing resulted from human error "that did not have to happen."<sup>194</sup>

UNIFIL forces also suffered some casualties from flechettes. One UNIFIL officer, who requested anonymity, stated in September 1999 to AFP News Agency that the IDF continues to use flechettes occasionally, although many civilians have been killed in the past by this weapon.<sup>195</sup>

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194. Aluf Benn, "Rabin Will Talk with Ross Today to Improve the Understandings from Operation Accountability," *Ha'aretz*, 10 July 1995. At first, the media mistakenly reported that the IDF fired a packet shell. This explosive is comparable to flechettes, also exploding in the air, but releasing small charges that spread out on the ground. Despite these reports, there is no proof that the IDF used this latter weapon in Lebanon.

195. Jihad Saqlawi, "Flechette Shell Wreaks Havoc on Lebanese Civilians," AFP, 10 September 1999.

## Persons Killed

From the end of July 1993 (beginning of Operation Accountability) to the end of November 1999, the IDF and SLA killed<sup>196</sup>  
**at least 355 Lebanese civilians**

From July 1985 (establishment of the "security zone") to the end of November 1999, the groups fighting against Israel in Lebanon killed<sup>197</sup>  
**nine Israeli civilians**

From the end of April 1996 (the end of Operation Grapes of Wrath) to the end of November 1999, the groups fighting against Israel in Lebanon killed<sup>198</sup>  
**at least twenty-five Lebanese civilians**

From June 1985 (establishment of the "security zone") to the end of November 1999, IDF and SLA soldiers killed in Lebanon totalled<sup>199</sup>  
**244 IDF soldiers, 410 SLA soldiers**

From January 1996 to May 1999, there were killed in Lebanon<sup>200</sup>  
**121 Hizbullah combatants**

From March 1978 (establishment of UNIFIL) to the end of November 1999, the combating sides in South Lebanon killed<sup>201</sup>  
**228 UNIFIL soldiers**

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196. The figures relating to Operation Grapes of Wrath are taken from the Amnesty International and HRW reports mentioned above. The figures on persons killed between the operations and during the last three years are from B'Tselem's records, which are based on UNIFIL reports, reports of the committee monitoring the Operation Grapes of Wrath understandings, and the Israeli press. Reliable figures could not be obtained for this category prior to Operation Accountability.

197. The figures until September 1997 are taken from Israel's Ministry of Defense. See Ehrlich, "The Concept of the Security Zone."

198. Until 15 July 1999, the figures were taken from UNIFIL reports. Since then, the figures were taken from B'Tselem's records.

199. These figures do not include the helicopter disaster that occurred in the north of Israel in February 1997. The number of soldiers killed prior to September 1997 is taken from Ministry of Defense figures. See Ehrlich, "The Concept of the Security Zone." The figures since then are taken from the IDF's official website: <http://www.idf.il>.

200. The figure is taken from [http://www.moqawama.org/page2/f\\_martyrs.htm](http://www.moqawama.org/page2/f_martyrs.htm), the Hizbullah website, and should be considered an estimation. Reliable figures could not be obtained for the number of Hizbullah, Amal, and other militia forces killed fighting against Israel.

201. The figure is taken from the UNIFIL website: <http://www.un.org/Depts/Missions/unifil.htm>.

## Summary

This report raised three principal arguments. First, Israel, as the occupier of South Lebanon, bears overall responsibility for protecting human rights in the area. Thus, Israel is required to take necessary action to ensure those rights and prosecute and punish persons responsible for their violation. Second, although most of the human rights violations are committed by SLA forces, Israel bears responsibility because the SLA is in large part subordinate to the authority of the Israeli government. Third, Israel bears responsibility for the lives and welfare of civilians in areas that it bombs and shells in military actions, and is obligated to act in accordance with the laws of war.

Israel flagrantly and continuously violates fundamental human rights of Lebanese civilians. These violations, whether committed directly by Israel or indirectly through the SLA, constitute war crimes under international humanitarian law. The main violations described in the report are:

- Extra-judicial detention of persons at Al-Khiam Prison for prolonged periods and use of severe torture against them during interrogations;
- Abduction of persons and holding them as hostages in prisons in Israel;
- Expulsion or forcible transfer of residents of the occupied zone in South Lebanon;
- Arbitrary restrictions on freedom of movement;
- Forced conscription of residents, including minors, into the SLA and its security apparatus;
- Indiscriminate firing during military attacks, leading to the death of hundreds of civilians;
- Unjustifiable killing of civilians by use of weapons prohibited by the laws of war.

Hizbullah, Amal, and the other militias fighting against Israel also violate the laws of war and the human rights of civilians in Israel and South

Lebanon by indiscriminate firing and by planting explosives.

The government of Israel has consistently denied its responsibility for these violations of human rights. Contentions such as "Israel does not have effective control in South Lebanon," "Israel is not responsible for the acts of the SLA," or "it is just propaganda by hostile Lebanese entities" (see the response of the Ministry of Defense, at the end of the report), are often raised by Israeli authorities to evade their responsibility. This report shows that these contentions are baseless.

# **Recommendations to the Israeli Government**

**B'Tselem urges the Israeli government as follows:**

## **Regarding Al-Khiam Prison**

- Release immediately all detainees, unless the authorities have proof that a detainee committed a criminal offense, in which case he or she should be prosecuted with all due diligence. In such prosecutions, conduct the legal proceedings in accordance with due process and allow detainees to meet and be represented by counsel.
- Immediately cease the use of torture of any kind.
- Improve prison conditions to meet the relevant minimal standards set by the UN.
- Enable independent physicians, human rights organizations, journalists, and other relevant persons and bodies to conduct periodic, comprehensive visits inside the prison

## **Regarding Lebanese detainees held in Israel**

- Release immediately all the Lebanese held in Israel as hostages.

## **Regarding the policy of expulsion and restriction on freedom of movement**

- Prohibit unequivocally all forces operating on behalf of Israel from directly or indirectly expelling or forcibly transferring residents from the occupied zone in South Lebanon.
- Enable expelled Lebanese civilians to return, if they wish, to their homes and receive their personal property, without fear of harassment or coercion by the SLA, IDF, or any other body. At the same time, enable human rights organizations to monitor and document the return of civilians.
- Prohibit all forces operating on behalf of Israel to use any form of collective punishment or to terrify residents of the area, by expulsions, detentions, threats, closure of villages, and the like.

- Amend existing regulations regarding entering and leaving the occupied zone, in order to ensure that freedom of movement of residents is not arbitrarily denied.

#### **Regarding forced conscription and collaboration with the SLA**

- Prohibit SLA leaders from conscripting residents of the occupied zone by force or by harassment and threats.
- Prohibit unequivocally conscription into SLA of minors (persons under eighteen), even with the individual's consent.
- Prohibit all forces operating on behalf of Israel from coercing residents into collaborating or providing information.

#### **Regarding bombing and shelling**

- Issue unequivocal orders to the IDF and SLA to refrain from indiscriminate firing in populated areas, even when firing in retaliation for attacks on Israeli civilians or IDF forces. Where it is unclear if a civilian object is used for military purposes, presume that the object is civilian and thus immune from attack according to the laws of war. Ensure that, prior to firing, necessary precautionary measures are taken to prevent, or at least diminish the likelihood, of civilian casualties.
- Prohibit IDF and SLA forces from using roadside explosives, phosphorous incendiary devices, and flechettes.
- Establish an independent commission of inquiry following every incident involving civilian casualties resulting from firing that ostensibly violated the laws of war. This commission should also be empowered, where it considers justification to exist, to recommend prosecution of individuals responsible for the killing of civilians in violation of the laws of war.
- Sign and ratify Protocol 1 to the Geneva Conventions.





יחידת הקישור ללבנון  
 חסינו האזרחי  
 وحدة الارتباط للبنان  
 العقبون المدنية

רשיון מס' 199 012

גזרה תיזה מנטלה:

תשריח דפול ופדורח למנטלה הצרא מלאטי למנטלה למנה

מן פדריק מעבר:

בסמך למסד בולס מר מוסלמה מן סקאן: בטימא

רמס הסבל: סבא סמוליד סנה: 1978 מן סקאן הולאדה: בטימא

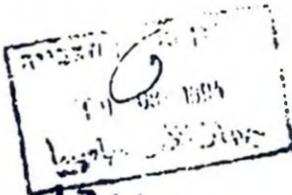
מלדפול ופדורח למנטלה הצרא מלאטי ובמלכס

מן פדריק מעבר:

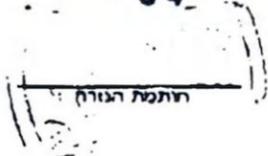
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סדרי הסמטור  
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## Response of the Ministry of Defense\*



STATE OF ISRAEL

### Spokesperson of the Ministry of Defense

Yechezkel Lein  
B'Tselem  
43 Emek Refaim Street  
Jerusalem 93141

26 December 1999  
File 8115  
Info 5098  
Telephone: 03-6975546  
Fax: 03-6977285

Dear Sir:

**Re: B'Tselem report**

Your request of 13 December 1999

In follow-up to your aforementioned request, the response of the Defense establishment is as follows:

1. We read B'Tselem's report on "Israel's violations of human rights of Lebanese civilians." The report is replete with inaccuracies, half-truths, and one-sided arguments raised from time to time by the propaganda apparatus of the Lebanese government, Hizbullah, and other bodies hostile to Israel. We do not intend to argue with the many details appearing in the sixty-seven page report, especially since some of the comments in the report were expressed in petitions and responses by the State in actions pending before the High Court of Justice. Rather, we shall point out a number of the fundamental aspects.
2. Israel is not fighting a war against "various armed groups," as stated in the introduction to the report, but has been defending itself since the 1960s, based on the right of self defense as defined in international law, against the threat of terror from Lebanon. The war that Israel is fighting daily is a just war, forced on it by states such as Syria and Iran, who use the "weapon of terror" to advance their political objectives.

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\* Translated by B'Tselem.

3. The basic reason for "the suffering and injustice" caused to Lebanese civilians, as stated in B'Tselem's report, is that various terrorist organizations, Palestinian and Lebanese, chose South Lebanon as the scene for their activity against Israel, established extensive parts of their military infrastructure within Lebanese population centers, from which they fight. As a result, the civilian population, Lebanese as well as Israeli (which the B'Tselem report ignores) more than once finds itself trapped between the warring sides, and are harmed by the daily warfare taking place in South Lebanon.
4. Furthermore, it should be noted that many attacks on civilians in South Lebanon result from activity of "Hizbullah" and other Lebanese organizations (which fire from within villages at population centers and plant explosives in population centers, thus injuring civilians). Israel is the one that raises the interests of those Lebanese residents before the "monitoring group" charged with monitoring the Grapes of Wrath Understandings.
5. On this background, it should be emphasized that the IDF is not an "occupying army" in the "security zone." It does not attempt to control and impose a military administration or "occupation" regime on the population and, therefore, it is not appropriate to present its activity as "military occupation." The IDF has received the support of most residents of the "security zone." On its part, Israel provides them with humanitarian assistance and enables residents to live, despite the warfare, at a standard of living higher than that of their neighbors north of the "security zone."
6. Contrary to what may be understood from B'Tselem's report, there is no attempt to "silence and conceal." The phenomena that the report calls "human rights violations" are widely and regularly covered in the Lebanese media and are presented in a distorted manner by the propaganda apparatus of "Hizbullah" and the Lebanese government. In this context, it should be understood that, along with the military warfare taking place daily, psychological and propaganda warfare is going on in the attempt to influence Lebanese and Israeli public opinion. Thus, reports by the Lebanese media (or international human rights organizations fed information by various Lebanese persons and bodies) should be examined with extreme care.
7. B'Tselem does not have the appropriate tools to examine human rights violations in South Lebanon. Complaints about harm to civilians, Lebanese and Israeli, are raised by official representatives of Israel and Lebanon, and are discussed in the "monitoring group." The "monitoring group," which was established primarily to protect civilians on both sides of the border, has the appropriate tools to examine individually each complaint and decide whether or not it is justified. The group has been active for the past three years, to the

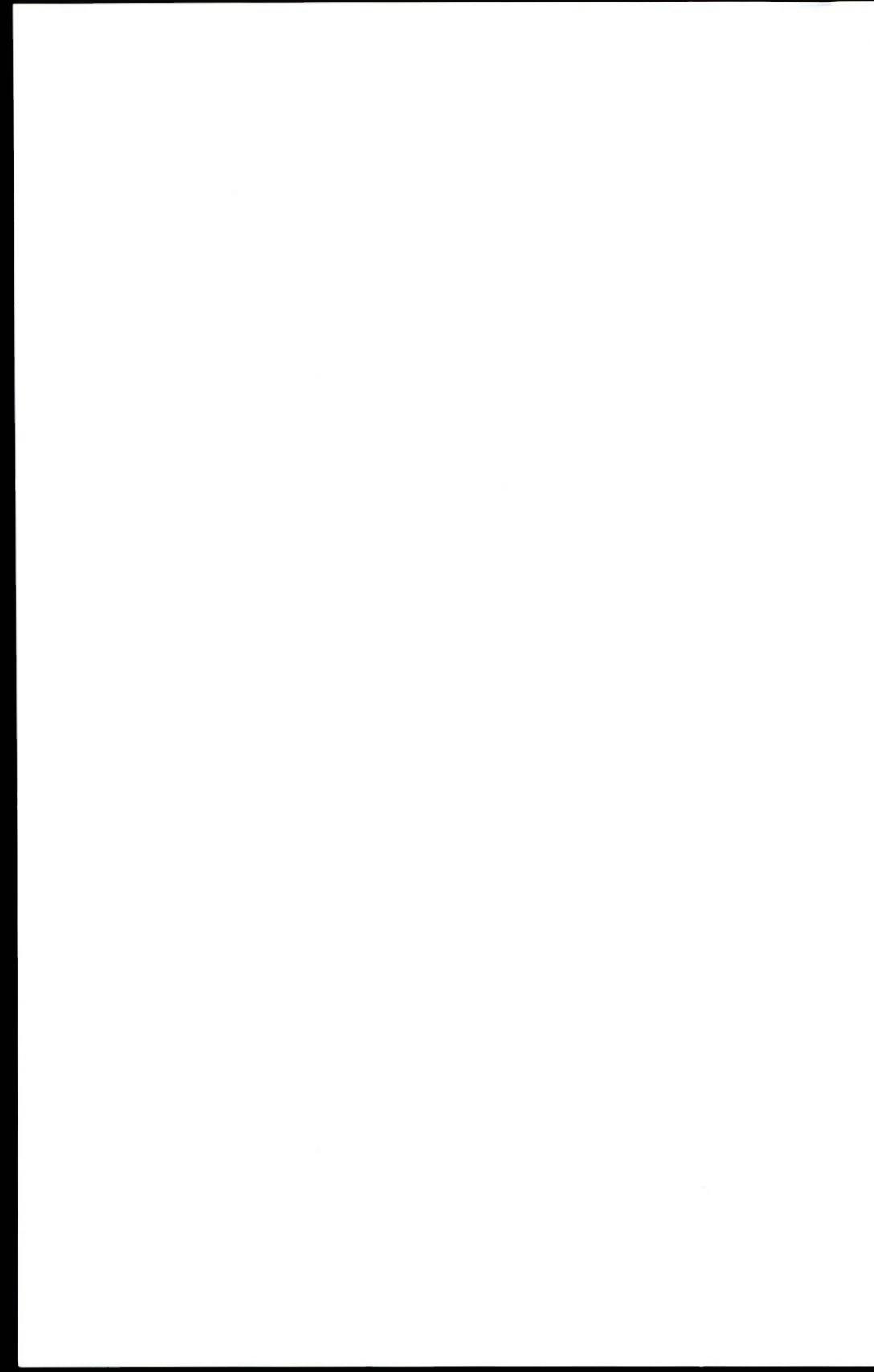
satisfaction of its members. It should be noted that the group's activity indeed contributed to a reduction in the harm to civilians on both sides of the border.

8. As regards the Al-Khiam detention facilities: this facility is the responsibility of the SLA. Detainees there are Lebanese involved in terrorist activity or sabotage against the SLA and at times also against the IDF. The Lebanese government is not willing to prosecute these detainees because it supports and defends "Hizbullah" and the other terrorist organizations. Al-Khiam is inspected regularly by the "Red Cross," family visits are allowed, and there is contact and ongoing dialogue between the "Red Cross" and the SLA.
9. The State Attorney's Office argues, and attempts to prove, in its detailed responses to the petitions in the Al-Khiam case presently pending before the High Court of Justice, that the IDF's activity in the "security zone" is not "occupation" but legitimate military action by the IDF, in back-up to the SLA, in the "security zone." The State's detailed response is based on a variety of facts (which appear in the response submitted to the High Court of Justice) and on the Israeli government's policy since 14 January 1985, and is sufficient to serve as a response to the many factual contentions raised in the B'Tselem report.
10. It should be added that, at this time, there is a chance that Israeli policy in Lebanon will change dramatically when peace agreements between Israel and Syria and Lebanon are signed. This change will also improve the distress of civilians on both sides of the border.

Sincerely,

s/

**Dan Weinreich**  
Spokesperson, Minister of Defense



## **B'Tselem Publications**

### **Comprehensive Studies**

- |                |  |
|----------------|--|
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| February 1998  | Routine Torture: Interrogation Methods of the General Security Service   |
| July 1997      | Prisoners of Peace: Administrative Detention during the Oslo Process   |
| March 1997     | Israeli Settlement in the Occupied Territories as a Violation of Human Rights: Legal and Conceptual Aspects  |
| January 1997   | A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem  |
| August 1995    | Neither Law Nor Justice: Extra-judicial Punishment, Abduction, Unlawful Arrest, and Torture of Palestinian Residents of the West Bank by the Palestinian Preventive Security Service |
| March 1994     | Law Enforcement vis-a-vis Israeli Civilians in the Occupied Territories  |
| January 1994   | Bi-Annual Report: Human Rights Violations in the Occupied Territories 1992/1993  |
| January 1994   | Collaborators in the Occupied Territories: Human Rights Abuses and Violations  |
| June 1993      | Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992  |

October 1992	Detained Without Trial: Administrative Detention in the Occupied Territories since the Beginning of the Intifada
May 1992	Activity of Undercover Units in the Occupied Territories
March 1992	The Interrogation of Palestinians During the Intifada: Follow-up to B'Tselem Report of March 1991
January 1992	Bi-Annual Report: Violations of Human Rights in the Occupied Territories 1990/1991
March 1991	The Interrogation of Palestinians during the Intifada: Ill-Treatment, "Moderate Physical Pressure?" or Torture?
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July 1990	The Use of Firearms by the Security Forces in the Occupied Territories
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November 1989	The Military Judicial System in the West Bank
September 1989	Demolition and Sealing of Houses in the West Bank and the Gaza Strip as a Punitive Measure during the Intifada

## Information Sheets

- July 1999                      On the Way to Annexation: Human Rights Violations Resulting from the Establishment and Expansion of the Ma'aleh Adumim Settlement
- May 1999                      Oslo: Before and After - The Status of Human Rights in the Occupied Territories
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- May 1998                      Divide and Rule: Prohibition on Passage between the Gaza Strip and the West Bank
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- August 1997                 Sheer Brutality - The Beatings Continue: Beatings and Maltreatment of Palestinians by Border Police and Police Officers during May-August 1997
- December 1996              Sexual Harassment in the Name of the Law: Violence and Degradation during Searches of Palestinian Homes in Hebron
- September 1996             Beatings, Maltreatment and Degradation of Palestinians by Israeli Authorities during June-July 1996
- April 1996                    Without Limits: Human Rights Violations under Closure

September 1995	Impossible Coexistence: Human Rights in Hebron since the Massacre at the Cave of the Patriarchs
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## Case Studies

- March 1997 Lethal Training: The Killing of Muhammad Al-Hilu by Undercover Soldiers in Hizmeh Village
- December 1996 Playing with Fire on the Temple Mount: Use of Lethal and Excessive Force by the Israel Police Force
- June 1995 Detention and Interrogation of Salem and Hanan "Ali", Husband and Wife, Residents of Bani Na'im Village
- April 1994 Summary Execution: Jabalya Refugee Camp, March 28, 1994 (joint report issued with Palestinian Lawyers for Human Rights)
- March 1994 Lethal Gunfire and Collective Punishment in the Wake of the Massacre at the Tomb of the Patriarchs
- November 1993 The "New Procedure" in GSS Interrogation: The Case of 'Abd A-Nasser 'Ulbeid
- January 1992 Khan Yunis, December 1992
- September 1992 The Death of Mustafa Barakat in the Interrogation Wing of the Tulkarm Prison

## Position Papers

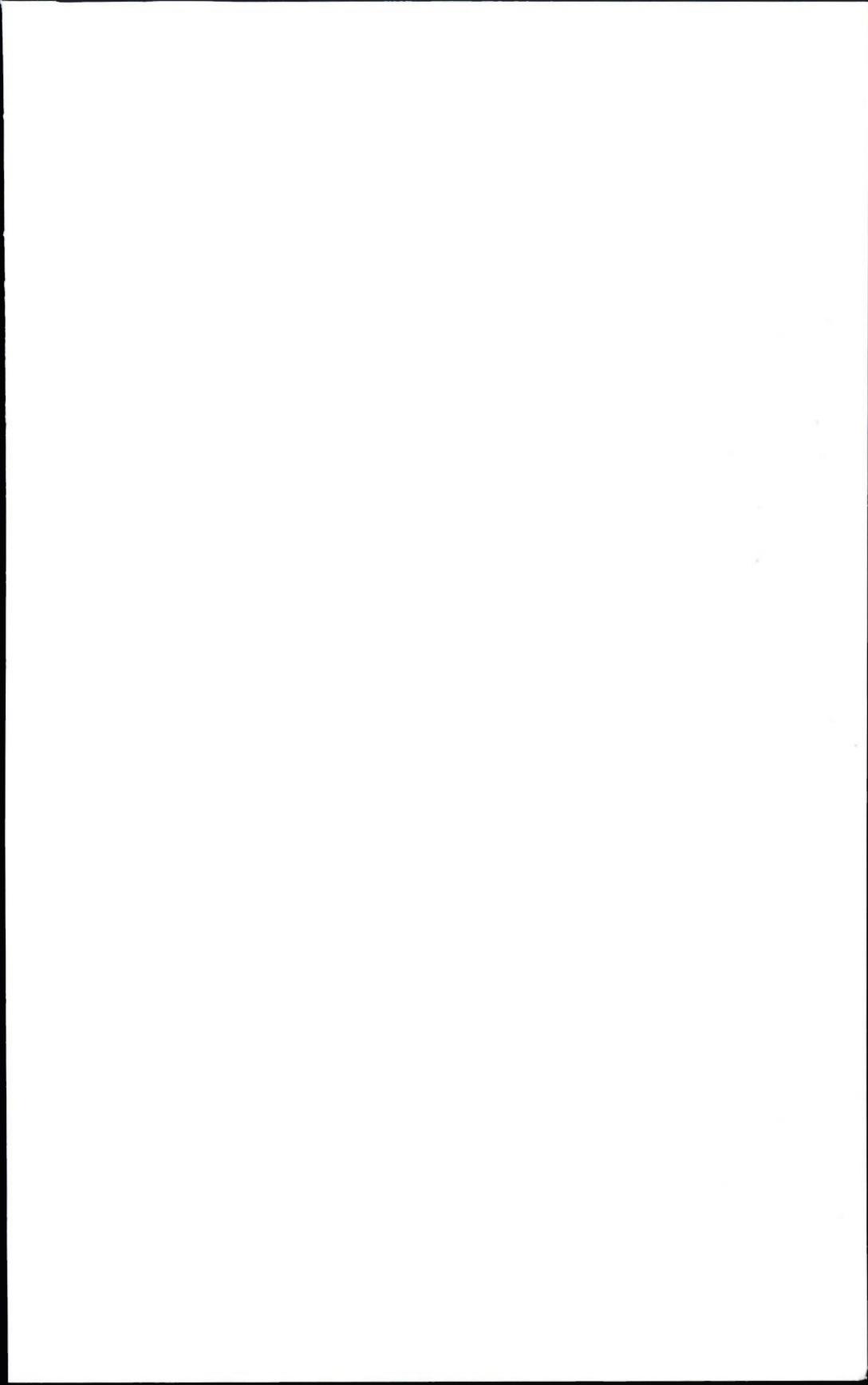
- January 2000 Legislation Allowing The Use of Physical Force and Mental Coercion in Interrogations by the General Security Service

## Miscellaneous Reports

- July 1999 Families Torn Apart: Separation of Palestinian Families in the Occupied Territories (joint report issued with HaMoked: Center for the Defence of the Individual)
- June 1999 Cooperating Against Justice: Human Rights Violations by Israel and the Palestinian National Authority following the Murders in Wadi Qelt (joint report issued with LAW)
- May 1999 Oslo: Before and After - The Status of Human Rights in the Occupied Territories
- March 1999 Captive Corpses
- September 1998 The Quiet Deportation Continues: Revocation of Residency and Denial of Social Rights of East Jerusalem Palestinians (joint report issued with HaMoked: Center for the Defence of the Individual)
- April 1997 The Quiet Deportation: Revocation of Residency of East Jerusalem Palestinians (joint report issued with HaMoked: Center for the Defence of the Individual)
- January 1997 Legitimizing Torture: The Israeli High Court of Justice Rulings in the Bilbeisi, Hamdan and Mubarak Cases
- December 1996 Human Rights in the Occupied Territories since the Oslo Accords: Status Report (joint report issued with The Palestinian Human Rights Monitoring Group)

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Norwegian Foreign Ministry,  
Federal Department of Foreign Affairs (Switzerland)



בצלם

**B'TSELEM**

The Israeli Information Center for Human  
Rights in the Occupied Territories

Tel:02-5617271 Fax:02-5610756

<http://www.btselem.org>

B'TSELEM- The Israeli Center for Human Rights in the Occupied Territories was established in 1989 by a diverse group of academics, attorneys, journalists, and public figures. It endeavors to educate the general public and policymakers about human rights violations in the Occupied Territories, and to press for policy changes in human rights issues.

B'Tselem thoroughly scrutinizes all information it publishes. Fieldwork data and findings are cross-checked with relevant documents, official government sources, most notably the IDF Spokesperson, and information from other sources, among them Israeli and Palestinian human rights organizations.

As an Israeli human rights organization, B'Tselem acts primarily to change Israeli policy in the Occupied Territories and ensure that Israel complies with its obligations to respect human rights and international humanitarian law. B'Tselem's mandate is limited to monitoring and documenting human rights violations in the Occupied Territories. However, B'Tselem also strongly opposes human rights abuses committed by any party, whether committed in the Occupied Territories or elsewhere.

Despite the potential of ending military administration of the Occupied Territories offered by the signing of the Declaration of Principles in 1993, the necessity of safeguarding human rights in the Occupied Territories remains. As the peace process proceeds, B'Tselem shall continue its efforts to ensure respect for human rights.